

September 13, 2021

VIA ELECTRONIC MAIL

John E. Galt
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**Re: Construction Code Administrative Appeal: APL21-006
Yang Prehearing Memorandum, Witness List and Exhibit List**

Dear Mr. Galt:

This firm represents Steve and Sophy Yang (collectively “the Yangs”). On behalf of all parties, I would like to express my appreciation for your agreement to oversee this appeal. This letter serves as the Yangs’ appeal brief. The Yangs’ witness list is attached as **Appendix A**. The Yangs’ exhibit list is attached as **Appendix B**. Relevant Mercer Island City Code provisions are attached as **Appendix C**.

I. SUMMARY OF BASIS FOR APPEAL

The Yangs and Chris and Nicole Niederman (collectively “the Niedermans”) are neighbors. They are currently engaged in pending litigation filed under King County Superior Court Cause No. 20-08679-7 (the “Pending Ligation”) regarding the Niedermans’ assertion that they have prescriptive easement rights over the Yang Property to: (a) access the Niederman Property in a location that aligns with their driveway, rather than the location of the deeded ingress/egress easement (the “Access Easement”) to the Niederman Property; (b) utilize an undefined portions of the Yang Property outside the deeded easement to turnaround; and (c) utilize the Yang Property to store garbage and recycling bins for pickup. **Exs. 1001, 1002.**

The Niedermans’ access rights are governed by a 10-foot deeded Access Easement over the Yang Property, deeded on the face of the Evan’s Addition short plat (the “Plat’). **Ex. 1003.** In November 2019, the Niedermans poured a new concrete driveway in a location that does not align with the Access Easement. **Ex. 1004.** The result is that approximately half of the 10-foot Access Easement aligns with the driveway, with the Niedermans having no deeded right to exit via the easterly 2/3rds of their driveway.

This misalignment was made possible by the Niedermans' omission of the deeded easement access from the Niedermans' survey when they submitted for permits to the City of Mercer Island when their home was constructed. **Exs. 1005, 1006**. It was an error for the City of Mercer Island to approve the driveway pouring in the first place, without verifying access easement rights, prior to the time that litigation was commenced. In July 2021, the City doubled down on its initial failures by approving Permit No. 2105-227 which would result in construction of a permanent access gate in a location which would require the Niedermans to trespass on the Yang Property to utilize the gate and would obstruct the Niedermans' ability to exit via the Access Easement. **Ex. 1007**. The Yangs have now appealed.

In refusing to revoke its permit approval, the City ignores that: (a) it did not follow its own law and rules for permit approval; and (b) Chris Niederman submitted false sworn statements in the Niedermans' application for the permit when he certified to the City of Mercer Island that “**all easement, deed restrictions or other encumbrances restricting the use of the property are shown on the site plans submitted with this application.**” **Exs. 1005, 1006** (emphasis added). The Niedermans omitted from their application the location of the 10-foot deeded Access Easement they have to the Yang Property. *Id.*

Separate from the perjured permit application, the official City of Mercer Island Fire Department Development Standards Guide (“City Development Guide”) specifically indicates that approval of automatic security gates requires that the applicant show “**access easement width.**” **Ex. 1008, pp 23-26** (emphasis added). The Development Standards Guide is adopted under the authority of Chapter 19.27 RCW and WAC 51-54A-002 and thus is City administrative law. The purpose behind a fire code requirement to show lawful access is obvious: if an applicant does not have a lawful right to ingress/egress, the presence of a gate would pose a fire hazard. This is particularly true when the proposed gate **obstructs the lawful access.**

As set forth below, there is little question that this permit approval in the face of the pending litigation is improper. Specifically, the approval should be overturned for the following reasons:

1. The Yangs are an “affected property” for purposes of Mercer Island City Code, and the Niedermans did not obtain the Yangs' approval in submitting their permit application.
2. The City's approval could affect the outcome of the pending litigation.
3. The City wrongfully failed to follow its own law and procedures and relied upon perjured evidence in approving the application.
4. Chris Niederman testified he is seeking to install the gate to create a safety hazard, which information was not considered by the City.

III. PROCEDURAL POSTURE OF PENDING LITIGATION AND ADDITIONAL RELEVANT FACTS

The parties both have Motions for Summary Judgment pending in the Superior Court, on which the Court will hear arguments on September 30. **Ex. 1010**. In their Motion for Summary Judgment, the Niedermans apparently acknowledge that they have no basis for a prescriptive easement as they submit no evidence to support such a claim, but rather shift course to argue that they have a right to turnaround in other areas of the Yang Property, based upon bizarre arguments that the Yangs struggle to understand. With the City's approval, the Yangs constructed a new "FIRE VECHILE TURNAROUND" in July 2021 in areas of the Yang Property that were not previously paved, and there is no argument that the Niedermans have a right to utilize this new area. **Ex. 1010**. The pending Summary Judgment claims will not be resolved by this Administrative Hearing on September 20.

The problem with the proposed gate construction is that the Niedermans are effectively trying to use the gate to barricade themselves so that: (a) the Court will not want to remove their structures, even if the court disagrees with their legal claims; (b) the Niedermans' delivery truck drivers will be forced to utilize the Yang Property to turnaround, even if the Niedermans' exceptionally weak Turnaround Claim fails in court; (c) the Yangs will be unable to return trespassing garbage cans to the Niederman property, with the gate in the way; and (d) the presence of a new "safety hazard" created by the gate (as stated in Chris Niederman's own words) will cause the court to expand the easement rights to remedy safety concerns, irrespective of the lack of legal merit to the Niedermans claims.

While the physical construction may be on the Niederman Property, the proposed gate installation is being installed in a manner that obstructs the deeded access easement and forces the Niedermans to access their property through the Yang Property in areas where the Niedermans do not have a deeded easement.

IV. LEGAL ARGUMENT

a. The Niedermans did not Provide Consent to the Permit as Required by The Mercer Island City Code

Approval of this permit violates MICC 19.15.060(A)(8), which requires consent of all owners of the "affected property." "Affected" means ""to produce an effect upon (someone or something)." *Affect*, Merriam-Webster Dictionary (11th ed. 2003). As discussed below, the Yang Property is an "affected property," and thus, the Niedermans were required to obtain the Yangs' consent. One way the Yangs are "affected" by this as referenced in City Code is that the widening of the Niedermans' access will operate to reduce the "Lot Area" for development purposes as defined in MICC 19.16.010.

The Niedermans have creatively tried to limit the physical construction activity to their own property; however, because the construction of this gate forces access across the Yang Property, the Yang Property is very much an "affected property." The Yangs have not given their consent to this project as it will negatively affect their property rights as it is currently planned.

The City misunderstands the Yangs' argument in its Staff Report. The Yangs are not arguing that any portion of the constructed gate will be on the Yang Property. Rather, the Yangs are arguing that the gate as currently planned to be installed will necessarily require the Niedermans to travel over the area currently disputed in litigation. Nobody will be able to access the Niederman Property without traveling over the disputed area outside the deeded Access Easement on the Yangs' Property. This will result in the Niedermans, and anybody else needing to access the Niedermans' Property, continuously trespassing on the Yangs' Property. *See Olympic Pipe Line Co. v. Theony*, 124 Wn. App. 381, 393, 101 P.3d 430 (holding that the owner of an easement trespasses if he or she misuses, overburdens, or deviates from an existing easement); *see also Wallace v. Lewis County*, 134 Wn. App. 1, 15, 137 P.3d 101 (2006) (stating the elements for trespass).

Accordingly, the Yangs' Property is an "affected property" under MICC 19.15.060(A)(8), and the Niedermans were required to obtain the Yangs' consent prior to submitting their application, which they never did.

b. The Permit Approval is Inappropriate Given that it Could Impact the Outcome of Pending Litigation

By the City of Mercer Island approving the permit, it may have some role in determining the outcome of the litigation through permit approval, which runs contrary to legal authority. *Halverson v. City of Bellevue*, 41 Wn. App. 457, 461, 704 P.2d 1232 (1985) ("[o]nce the City was put on notice of [pending litigation], approval of the plat as submitted was improper."). There, the court of appeals noted that applicable land use statutes did not address the question of how a local jurisdiction should proceed when final plat approval is pending and the ownership of a portion of the property to be platted is in dispute. *Id.* at 460. It interpreted the applicable platting statute to require that questions of ownership of the subdivided land must be resolved before plat approval is granted. *Id.* at 459. The court held in *Harrison v. County of Stevens*, 115 Wn. App. 126, 132, 61 P.3d 1201 (2003), that for a subdivision plat, "[c]onsent of the owners is necessary to prevent future title challenges."

The City's involvement in this pending litigation is inappropriate, and the City misstates its obligations under *Halverson*. If construction of the gate moves forward and the Niedermans install it as planned, the Superior Court may hesitate to make any ruling that would require the Niedermans remove their already-installed gate based on principles of economic waste. In the Niedermans' property's current condition, if the Court ultimately agrees with the Yangs' arguments and finds that the Niedermans do not have a prescriptive easement, the Court could easily make such a finding with no significant detriment to either party. If, on the other hand, the gate has already been installed when the Court makes its decision, the Court may be concerned that ruling in the Yangs' favor could result in economic waste, i.e. requiring the Niedermans to remove and replace their gate.

The application approval should be reversed and denied unless the Niedermans submit new plans which show the gate will not in any way force the Niedermans to access the Yangs' Property

outside the deeded Access Easement. Mercer Island’s decision in this permit application should be stayed pending the outcome of the Superior Court litigation.

c. This City Has Failed to Follow Applicable Law and Procedures and Relied on a Perjured Permit Application in Approving the Permit

As noted above, the City adopted a Development Manual for situations such as this which states that the Development Manual itself operates as binding law in the City of Mercer Island:

AUTHORITY AND SCOPE

These rules are adopted under the authority of Chapter 19.27 RCW and WAC 51-54A-002 The purpose of these rules is to implement the provisions of Chapter 19.27 RCW, which provides that the State Building Code Council shall maintain the State Building Code in a status which is consistent with the purpose as set forth in RCW 19.27.020. In maintaining the codes the Council shall regularly review updated versions of the codes adopted under the act, and other pertinent information, and shall amend the codes as deemed appropriate by Council. Construction code amendments have been adopted under Mercer Island Municipal Code section 17.07.

The information in this document is intended to assist applicants in attaining compliance and to ensure that privately owned roadways identified for emergency response will be available for use at all times.

Ex. 1008 at 2. The Development Manual contains an addendum on “Auto Security Gates,” which provides as follows:

Submit Plans and Specification Sheets for Permit Review

1. Two sets of construction documents and supporting data shall be submitted.
105.4.1
2. Construction documents shall be drawn to scale and may be provided in paper format or using electronic media. *For more information on electronic plan submittal visit <http://www.mercergov.org/Page.asp?NavID=2619>.*
3. Plans shall clearly show gate location, driveway paved area all the way to the access road, access easement width if applicable, control pedestal, and any access obstructions in the area.

***Id.* at 23.** Additionally, MICC 19.15.070 **mandates that the City shall not accept an incomplete application for processing in review.** The code provides in pertinent part:

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

MICC 19.15.070(a). *See also* MICC 19.15.060 (requiring title report showing right to engage in proposed development activities). Furthermore, MICC 6.10.110 expressly indicates as part of its “Permit” definition that “easements and use limitations shown on the face of the approved plat” are “deemed conditions applicable to all subsequent plat property owners . . . and enforceable under this chapter.” The application at **Exhibit 1006** expressly **required** that all easements be

identified, and the City failed to follow its own law, or even consider whether all easements were identified. **Ex. 1011.**

The City's failure to follow its own laws and procedures is nothing other than a failure of the Yangs' due process rights.

A City's failure to follow its own procedures results in a constitutional violation if: (1) the City violates minimal constitutional requirements, or (2) the City's resulting decision was so arbitrary and capricious that it violates substantive due process. *Danielson v. City of Seattle*, 45 Wn. App. 235, 244, 724 P.2d 1115 (1986). "The 'root' requirement of the Due Process Clause is that a deprivation of property be preceded by notice and an opportunity for hearing appropriate to the nature of the case." *Danielson*, 45 Wn. App. at 245 (quoting *Cleveland Board of Educ. V. Loudermill*, 470 U.S. 532, 105 S. Ct. 1487, 1493, 84 L. Ed. 2d 494 (1985)). "The Court noted that a court must determine what process is 'due' in a particular case by balancing the competing interests at stake." *Danielson*, 45 Wn. App. at 245 (quoting *Loudermill*, 105 S. Ct. at 1493).

The City approved the application without having all the pertinent information to make its decision and without a complete application for purposes of MICC 19.15.070. The City of Mercer Island application instructions specifically state that "[p]lans shall clearly show gate location, driveway paved area all the way to the access road, **access easement width if applicable**, control pedestal, and any access obstructions in the area." **Ex. 1012** (emphasis added). The Niedermans omitted evidence of the location of the deeded Access Easement from their application, thereby omitting required information the City needed in determining whether to grant or deny the Niedermans' application. Further, Chris Niederman falsely certified that the application included all required documents and information. **Ex. 1006**. Submitting a false sworn statement to a government entity is the crime of perjury under RCW 9A.72.020 and is a Class B felony.

The Yangs did not receive due process here because the City failed to follow its own procedures. The Niedermans' application failed to include all relevant information, and the City refused to withdraw its application after it became aware of the Niedermans' omission. **Exs. 1006, 1011**. The competing balance interests here are the Niedermans' interest in the installation of their gate and the Yangs' interest in ensuring their property rights are not violated. While the Niedermans may have a right to install a gate on their property if they so choose, they **do not have a right to do so in a manner that will negatively affect, encroach, cause trespasses or safety hazards on the Yang Property**. As the gate will be installed per the plans, it will force the Niedermans and anybody accessing the Niederman Property to cross the Yang Property where the Niedermans do not have an easement. The Niedermans failed to disclose this fact in their application, and the City refused to deny the Niedermans' application once it became aware of this fact.

d. The Niedermans Admit That the Gate will Result in Safety Concerns

State courts have held that permit applications "may validly be denied" based on safety concerns "if substantial evidence shows that the proposed use is likely to . . . result in safety threats from construction." 2 Am. Law. Zoning § 14:13 n. 1 (5th ed. 2021) (citing various state courts

around the country). **Additionally, City Code (which the City cites as applicable in its Staff Report) expressly provides that a gate may “not create a traffic, pedestrian, or public safety hazard.” MCC 19.02.050(E)(1)(b)(ii)(c).**

Chris Niederman has explicitly stated under oath that if constructed, the gate is going to create a significant safety hazard. In a September 2, 2021, Declaration, Mr. Niederman testified as follows:

Recently the City of Mercer Island granted us a permit to put up a car gate across our driveway, something we have long planned, and *soon there will be no safe way for cars and trucks to turn around at the bottom of the private lane.*

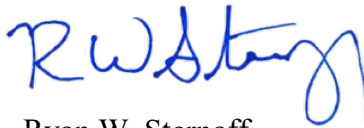
Ex. 1013 (emphasis added). The Niedermans admit that they are creating a safety hazard by eliminating any safe way for their own invitees to turn around, and approval of the application with this admission is improper. In fact, they are deliberately trying to create a safety hazard based upon the perverse belief that it will be advantageous in the pending litigation. It is improper for the City to knowingly allow approval of a gate permit when it will create a safety issue, particularly when the City and its taxpayers will be responsible for any adverse consequences resulting from such safety issues.

V. CONCLUSION

The Niedermans were required to obtain the Yangs’ consent to the gate as the Yang Property is an “affected property” under MICC 19.15.060(A)(8). The Niedermans omitted relevant information from their application that was explicitly required per the instructions and falsely certified that they included all necessary information. Finally, given the pending litigation, the City’s approval of this application was inappropriate, as it may ultimately have a role in determining the outcome of the litigation. Accordingly, the Yangs ask that the Hearing Examiner reverse the City of Mercer Island’s approval of Permit No. 2105-227.

Yours Truly,

AHLERS CRESSMAN & SLEIGHT PLLC



Ryan W. Sternoff

RWS/skk

Enclosures

cc: Steve and Sophy Yang

APPENDIX A

Appellants' Witness List

1. Steve Yang
c/o Ahlers Cressman & Sleight PLLC
1325 Fourth Avenue, Suite 1850
Seattle, WA 98104
(206) 287-9900

2. Sophy Yang
c/o Ahlers Cressman & Sleight PLLC
1325 Fourth Avenue, Suite 1850
Seattle, WA 98104
(206) 287-9900

3. Richard Fisher
1932 1st Avenue, Suite 601
Seattle, WA 98101
(206) 441-0442

4. Chris Niederman
c/o Carney Badley Spellman, P.S.
701 Fifth Avenue, Suite 3600
Seattle, WA 98104
(206) 622-8020

APPENDIX B

Appellants' Exhibit List

Exhibit 1001 – Complaint

Exhibit 1002 – Answer and Counterclaims

Exhibit 1003 – Plat

Exhibit 1004 – Declaration of Ryan Sternoff in Support of Motion for Summary Judgment

Exhibit 1005 – Permit Application Plans

Exhibit 1006 – Permit Application

Exhibit 1007 – Permit Approval

Exhibit 1008 – City of Mercer Island Fire Department Development Manual

Exhibit 1009 – Declaration of Richard Fisher in Support of motion for Summary Judgment

Exhibit 1010 – Yangs' Motion for Partial Summary Judgment

Exhibit 1011 – Emails

Exhibit 1012 – Mercer Island Fire Marshall – Auto Security Gates

Exhibit 1013 – Declaration of Chris Niederman in Support of Motion for Summary Judgment

Exhibit 1014 – Declaration of Steve Yang in Support of Motion for Summary Judgment

Exhibit 1015 – Declaration of Sophy Yang in Support of Motion for Summary Judgment

Exhibit 1016 – Aerial Photograph Showing the Properties

Exhibit 1017 – Google Earth Aerial Photograph Showing the Properties

Exhibit 1018 – Aerial Photograph Showing the Properties

Exhibit 1019 – Survey

Exhibit 1020 – Email from City of Mercer Island

APPENDIX C

6.10.110 Definitions.

Except where specifically defined in this section, all words used in this chapter shall carry their customary meanings. The word “shall” is always mandatory, and the word “may” denotes a use of discretion in making a decision. The following words and phrases used in this title shall have the following meanings:

“Abate” means to take whatever steps are deemed necessary in the interest of the general health, safety, and welfare of the city by the director to return a property to the condition in which it existed before a civil code violation occurred or to assure that the property complies with applicable code requirements. Abatement may include, but is not limited to, rehabilitation, demolition, removal, replacement or repair.

“Appeal hearing” means a hearing requested in response to a notice of violation, stop work order, or other official written notice of violation issued by the director to contest the finding that a violation occurred or to contest that the person cited for a violation is responsible for the violation.

“Civil penalty” or “monetary penalty” means a fine or fee levied as a consequence for a civil violation, civil infraction or stop work order.

“Civil violation” or “code violation” or “violation” means and includes one or more of the following:

1. Any act or omission contrary to any ordinance, resolution, regulation or public rule of the city that regulates or protects public health, the environment or the use and development of land or water, whether or not the ordinance, resolution or regulation is codified.
2. Any act or omission contrary to the conditions of any permit, violation notice or stop work or other order issued pursuant to any such ordinance, resolution, regulation or public rule.

“Complainant” means the person that makes a complaint to the city reporting a violation or potential violation.

“Compliance” means the violation has been abated, remediated or otherwise resolved and any applicable penalties or costs have been paid.

“Costs” means, but is not limited to, contract expenses and city employee labor expenses incurred in abating a nuisance; a rental fee for city equipment used in abatement; costs of storage, disposal, or destruction; legal expenses and attorneys’ fees associated with civil judicial enforcement of abatement orders or in seeking abatement orders; and any other costs incurred by the city, excluding fees and expenses associated with appeals authorized by this code or by state law.

“De minimis” means a civil violation that is of very low impact and poses low risk to the health, safety and welfare of the public and to the environment.

“Development” means the erection, alteration, enlargement, demolition, maintenance or use of any structure or the alteration or use of land above, at, or below ground or water level, and all acts authorized by a city permit or regulation.

“Director” means the director of the community planning and development department, or their designee.

“Excessive complaint” means a complainant that repeatedly reports to the city the same or closely related issues in a manner that may be intended to harass or antagonize the alleged person responsible.

“Found in violation” means that:

1. A notice of violation, stop work order or infraction has been issued and not timely appealed; or
2. The hearing examiner has determined that the violation has occurred and the hearing examiner’s determination has not been stayed or reversed on appeal.

“Frivolous complaint” means a complaint that is based on an issue that is not a code violation or is a de minimus violation. The complaint may be an attempt to harass or antagonize the alleged person responsible.

“Hearing examiner” means the city of Mercer Island hearing examiner, as provided in Chapter [3.40](#) MICC.

“Infraction” or “civil infraction” means any code violation designated as an infraction or civil infraction by the director pursuant to Chapter [7.80](#) RCW, incorporated herein by reference.

“Mortgagee” means a financial institution, including a bank, credit union or other commercial lender, which holds mortgaged property as security for repayment of a loan.

“Notice of violation” means a written statement, issued by the director, that contains the information required under MICC [6.10.050\(B\)\(1\)](#) notifying a person that they are responsible for one or more civil violations of the MICC, orders the timely correction of the same, and/or assesses civil penalty for failure to timely correct.

“Nuisance” (also referred to herein as “violation” or “nuisance violation”) means:

1. A violation of any city of Mercer Island development, land use, or public health ordinance;
2. Doing an act, omitting to perform any act or duty, or permitting or allowing any act or omission that annoys, injures, or endangers the comfort, repose, health, or safety of others, is unreasonably offensive to the senses, or that obstructs or interferes with the free use of property so as to interfere with or disrupt the free use of that property by any lawful owner or occupant;
3. Potential vermin habitat or fire hazard; or
4. *Junk Vehicles*. A “junk vehicle” includes apparent inoperable, immobile, disassembled, or extensively damaged vehicles. In addition, any wrecked, inoperable, abandoned, or disassembled trailer, house trailer, boat, tractor, automobile, other vehicle, or any parts thereof.

“Owner” means any owner, part owner, joint owner, tenant in common, tenant in partnership, joint tenant, or tenant by the entirety, of the whole or of a part of a building or land.

“Permit” means any form of certificate, approval, registration, license or any other written permission issued by the city of Mercer Island. All conditions of approval, and all easements and use limitations shown on the face of an approved final plat which are intended to serve or protect the general public, are deemed conditions applicable to

all subsequent plat property owners and their tenants and agents as permit requirements enforceable under this chapter.

“Person responsible for the violation” or “person responsible” or “violation” means any of the following: the person doing the work; a person who has titled ownership or legal control of the property or structure that is subject to the violation; an occupant or other person in control of the property or structure that is subject to the violation; a developer, builder, business operator, or owner who is developing, building, or operating a business on the property or in a structure that is subject to the violation; a mortgagee that has filed an action in foreclosure on the property that is subject to the violation, based on breach or default of the mortgage agreement, until title to the property is transferred to a third party; a mortgagee of property that is subject to the violation and has not been occupied by the owner, the owner’s tenant, or a person having the owner’s permission to occupy the premises for a period of at least 90 days; or any person who created, caused, participated in, or has allowed a violation to occur.

“Public nuisance” means a nuisance that affects equally the rights of an entire community or neighborhood, although the extent of the damage may be unequal.

“Repeat violation” means a violation that has occurred on the same property or that has been committed by the same person responsible elsewhere within the city, for which voluntary compliance previously has been agreed to or any enforcement action taken that was not timely appealed or if appealed, the appeal was dismissed, within the previous 36-month period. (For purposes of this subsection, repeat violation does not include each day in violation being counted as a separate violation.) To constitute a repeat violation, the violation need not be the same violation as the prior violation. Violation of a written order of the hearing examiner that has been served as provided in this chapter shall also constitute a repeat violation.

“Resolution” means any resolution adopted by the Mercer Island city council.

“Stop work order” means a written order specifying code violations and prohibiting any work or other activity at a particular site.

“Voluntary compliance agreement” or “VCA” means a written contract between the person responsible for the violation and the city, under which such person agrees to abate the violation within a specified time and according to specified conditions. (Ord. 18C-06 § 2 (Att. A)).

The Mercer Island City Code is current through Ordinance 21C-03, passed February 16, 2021.

Disclaimer: The City Clerk's Office has the official version of the Mercer Island City Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

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[City Website: www.mercerisland.gov](http://www.mercerisland.gov)

City Telephone: (206) 275-7600

[Code Publishing Company](#)

19.15.060 Application.

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

1. All applications for permits or land use reviews by the city shall be submitted on forms provided by the city;
2. A site plan, prepared in a form prescribed by the code official;
3. A completed SEPA environmental checklist, if required;
4. Any studies or reports required for the processing of the application;
5. A list of any permits or land use review types necessary for approval of the development proposal that have been obtained prior to filing the application or that are pending before the city or any other governmental entity;
6. Drainage plans and documentation required by the Stormwater Management Manual for Western Washington as adopted by Chapter [15.09](#) MICC, if applicable;
7. Legal description of the site;
8. Verification that the property affected by the application is in the exclusive ownership of the applicant, or that the applicant has a right to develop the site and that the application has been submitted with the consent of all owners of the affected property; provided, that compliance with subsection [\(A\)\(9\)](#) of this section shall satisfy the requirements of this subsection;
9. For Type II, III, and IV reviews, a title report from a reputable title company indicating that the applicant has either sole marketable title to the development site or has a publicly recorded right to develop the site (such as an easement). If the title report does not clearly indicate that the applicant has such rights, then the applicant shall include the written consent of the record holder(s) of the development site. The code official may waive this requirement if the title report will not substantively inform the review of the development proposal; and
10. All applications for preliminary design review shall contain all information and materials deemed necessary by the code official to determine if the proposal complies with this chapter. Such materials may include a site survey; site plans; elevations; sections; architectural plans; roof plans; renderings and/or models; landscaping plan; parking plan; color and materials board; vicinity maps; site photographs; SEPA checklist; traffic study; pedestrian and vehicle circulation plans; and written narrative describing the project proposal and detailing how the project is meeting the applicable design objectives and standards established

in Chapter [19.11](#) or [19.12](#) MICC. For new construction, submittal of lighting and sign master plans may be deferred to the public hearing if applicable.

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

C. All applications for permits or land use review by the city shall be accompanied by a filing fee in an amount established by city ordinance. (Ord. 18C-08 § 1 (Att. A)).

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City Telephone: (206) 275-7600

[Code Publishing Company](#)

19.15.070 Determination of completeness and letter of completion.

- A. *Complete Application Required.* The city will not accept an incomplete application for processing and review. An application is complete only when all information required on the application form and all submittal items required by the development code have been provided to the satisfaction of the code official.
- B. *Determination of Completeness.* Within 28 days after receiving an application for a Type III and Type IV land use review, the city shall mail, email, or provide in person a written letter of completion or letter of incompleteness to the applicant, stating either that the application is complete or that the application is incomplete. If an application is incomplete, the letter of incompleteness shall identify what additional documentation is necessary to result in a complete application. An application shall be deemed complete if the city does not provide a written determination to the applicant stating that the application is incomplete within 28 days after receiving an application.
- C. *Response to Letter of Incompleteness.* 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 that the application is complete, or indicate that the application is incomplete and specify additional documentation as specified in subsection [B](#) of this section that is necessary to result in a complete application.
- D. *Completion Date.* The date an application is determined complete is the date of receipt by the department of all of the information necessary to make the application complete as provided in this chapter. The department's issuance of a letter of complete application, or the failure of the department to provide such a letter as directed by this section, shall cause an application to be conclusively deemed to be complete as provided in this section.
- E. If the applicant fails to provide the required information within 90 days of the letter of incompleteness, the application shall lapse. (Ord. 18C-08 § 1 (Att. A)).

The Mercer Island City Code is current through Ordinance 21C-03, passed February 16, 2021.

Disclaimer: The City Clerk's Office has the official version of the Mercer Island City Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

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19.16.010 Definitions.

Code reviser's note: This section has been amended by Ordinance No. [19C-02](#), an interim ordinance that is in effect until July 15, 2019. Ordinance No. [19-10](#) extended these provisions until January 14, 2020. Ordinance No. [19-22](#) extended these provisions until July 13, 2020. Ordinance No. [20-11](#) extended these provisions until January 12, 2021. Ordinance No. [20-28](#) extended these provisions until July 11, 2021.

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

Definitions prefaced with (SMP) are applicable only to the shoreline master program, Chapter [19.13](#) MICC.¹

1 Code reviser's note: The reference to MICC 19.07.110 in this section was corrected to Chapter [19.13](#) MICC at the city's request, for consistency with Ordinance No. [19C-06](#).

A

Accessory Buildings: A separate building or a portion of the main building, the use of which is related to and supports that of the main building on the same lot.

1. **Attached Accessory Building:** An accessory building that shares a portion of one of its walls with the main building, is separated from the main building by less than five feet, or is attached to the main building by a structure other than a fence.
2. **Detached Accessory Building:** An accessory building that does not share a portion of any of its walls with the main building and is separated from the main building by more than five feet and is not attached to the main building by a structure other than a fence or a pedestrian walkway. For example, detached accessory buildings may include, but are not limited to, garages, cabanas, guest rooms, and other similar buildings.

Accessory Dwelling Unit (ADU): A habitable dwelling unit added to, created within, or detached from a single-family dwelling that provides basic requirements for living, sleeping, eating, cooking and sanitation.

Accessory Structure: A separate structure that is not an accessory building, but is accessory and subordinate or incidental to the main building on the same lot including, but not limited to, the following: decks, porches, fences, trellises, and similar structures.

Accessory Use: A use customarily incidental and accessory to the principal use of a site or a building or other structure located upon the same lot.

Adult Entertainment: An adult retail establishment or adult theater. "Adult entertainment" shall not be considered to be included under any other permitted use in this code as either a primary or accessory use, and is not permitted in any zone unless specifically stated. For purposes of adult entertainment, the following definitions apply:

1. **Adult Retail:** An establishment in which 10 percent or more of the stock in trade consists of merchandise distinguished or characterized by a predominant emphasis on the depiction, description, simulation or relation to specified sexual activities or specified anatomical areas.

2. **Adult Theater:** A facility used for presenting for commercial purposes motion picture films, video cassettes, cable television, live entertainment or any other such material, performance or activity, distinguished or characterized by a predominant emphasis on depiction, description, simulation or relation to specified sexual activities or specified anatomical areas for observation by patrons therein. Structures housing panorams, peep shows, entertainment studios or topless or nude dancing are included in this definition.
3. **Merchandise:** Shall include, but is not limited to, the following: books, magazines, posters, cards, pictures, periodicals or other printed material; prerecorded video tapes, discs, film, or other such medium; instruments, devices, equipment, paraphernalia, or other such products.
4. **Panorams or Peep Shows:** Any device which, upon insertion of a coin or token or by any other means, exhibits or displays a picture; an image from a film, video cassette, video disc, or any other medium; or provides a view of a live performance.
5. **Specified Anatomical Areas:**
 - a. Less than completely and/or opaquely covered human genitals, pubic region, buttock, or female breast below the top of the areola.
 - b. Human male genitals in a discernibly turgid state, even if completely or opaquely covered.
6. **Specified Sexual Activities:**
 - a. Human genitals in a state of sexual stimulation, and/or
 - b. Sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex or between humans and animals, and/or
 - c. Acts of human masturbation, sadism or torture in the context of sexual relationship, and/or sadomasochistic abuse in the context of sexual relationship, and/or
 - d. Fondling or other erotic touching of human genitals, pubic region, buttocks or the female breast.
7. **Stock in Trade:** Shall mean either:
 - a. The dollar value of all merchandise readily available for purchase, rental, viewing, or use by patrons of the establishment excluding material located in any storeroom or other portion of the premises not regularly open to patrons; or
 - b. The total volume of shelf space and display area in those portions of the establishment open to patrons.

Adult Family Home: As defined and regulated by Chapter [70.128](#) RCW, an adult family home is the regular family abode of a person or persons who are providing personal care, special care, and room and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services.

Affordable Housing Unit: A dwelling unit reserved for occupancy by eligible households and having monthly housing expenses to the occupant no greater than 30 percent of a given monthly household income, adjusted for household size, as follows:

1. **Low-Income:** For owner-occupied housing, 50 percent of the King County median income, and for renter-occupied housing, 50 percent of the King County median income.
2. **Moderate-Income:** For owner-occupied housing, 90 percent of the King County median income. For renter-occupied housing, 60 percent of the King County median income.

Pursuant to the authority of RCW [36.70A.540](#), the city finds that the higher income levels specified in the definition of affordable housing in this chapter, rather than those stated in the definition of “low income households” in RCW [36.70A.540](#), are needed to address local housing market conditions in the city.

3. **King County Median Income:** The median family income for the Seattle-Bellevue, WA HUD Metro FMR Area as most recently published by the United States Department of Housing and Urban Development under Section 8(f)(3) of the United States Housing Act of 1937, as amended. In the event that HUD no longer publishes median family income figures for King County, the city may estimate the King County median income in such manner as the city shall determine.
4. **Eligible Household:** One or more adults and their dependents who certify that their annual household income does not exceed the applicable percent of the King County median income, adjusted for household size, and who certify that they meet all qualifications for eligibility, including any requirements for recertification on income eligibility.
5. **Housing Expense:** In the case of renter-occupied housing, rent, tenant-paid utilities, one parking space, and other tenant expenses required for the dwelling unit; and in the case of owner-occupied housing, mortgage, mortgage insurance, property taxes, property insurance, and homeowner’s dues.

Alteration: Any human-induced action which impacts the existing condition of the area, including but not limited to grading, filling, dredging, draining, channeling and paving (including construction and application of gravel). “Alteration” does not include walking, passive recreation, fishing, or similar activities.

Antenna: An apparatus, outside of or attached to the exterior of a structure, together with any supporting structure for sending or receiving electromagnetic waves. “Antenna” includes, but is not limited to, a dish antenna, wire or whip antenna, and microwave transmitting antenna. This definition does not include an antenna mounted on a licensed vehicle; provided, the antenna is a type commonly mounted on a licensed vehicle for the purposes of mobile communication or radio reception within the vehicle (such as AM/FM radio, citizens band radio, two-way radio or cellular telephone).

Appeal, Closed Record: An administrative appeal 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 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”).

Applicant: A property owner or a public agency or private utility or any person or entity designated or named in writing by the property or easement owner to be the applicant, in an application for a development permit, land use application, or other city approval.

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 Multifamily 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.

Assisted Living Facilities: Residences for the frail, sick or elderly, excluding special needs group housing, that provide rooms, meals, personal care and supervision of self-administered medication. Other services, such as recreational activities and transportation, may also be provided.

Average Building Elevation: The reference point on the surface topography of a lot from which building height is measured. The elevation in the R-8.4, R-9.6, R-12, and R-15 zoning designations is established by averaging the elevation at existing grade or finished grade, whichever is lower (MICC [19.02.020\(E\)\(4\)](#)). The elevation in the PI zoning designation is established by averaging the elevation at existing grade. 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.

Formula:	$\text{Average Building Elevation} = (\text{Weighted Sum of the Mid-point Elevations}) \div (\text{Total Length of Wall Segments})$
Where:	Weighted Sum of the Mid-point Elevations = The sum of: ((Mid-point Elevation of Each Individual Wall Segment) x (Length of Each Individual Wall Segment))

For example for a house with 10 wall segments:

$(Axa) + (Bxb) + (Cxc) + (Dxd) + (Exe) + (Fxf) + (Gxg) + (Hxh) + (Ixi) + (Jxj)$
$a + b + c + d + e + f + g + h + i + j$

Where:	A, B, C, D... = The existing or finished ground elevation, whichever is lower, at midpoint of wall segment.
And:	a, b, c, d... = The length of wall segment measured on outside of wall.

B

Bar: A premises used primarily for the sale or dispensing of liquor by the drink for on-site consumption and where food may be available for consumption on the premises as accessory to the principal use.

Base Station: A structure or equipment at a fixed location that enables commission licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a wireless communication facility tower as defined in this section or any equipment associated with a tower.

1. The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
2. The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small-cell networks).
3. The term includes any structure other than a tower that, at the time the relevant application is filed with the state or local government under this section, supports or houses equipment described in this section that has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.
4. The term does not include any structure that, at the time the relevant application is filed with the state or local government under this section, does not support or house equipment described in this section.

Bed and Breakfast: A single-family dwelling in which public lodging and meals may be provided to guests for periods of 30 days or less.

Best Available Science: Current scientific information based upon scientifically valid methods used to analyze critical areas, as defined by WAC [375-195-900](#) through [375-195-925](#), as amended.

Best Construction Practices: Methods, techniques and/or procedures developed by the city arborist to protect trees being retained during construction work from damage.

Best Management Practices: The practices that use the best available technologies or techniques, to prevent or minimize the degradation of any critical area or its buffer.

Binding Site Plan: A method of dividing land that sets out specifications for a number of aspects of development on the site, including streets, building envelopes, improvements, utilities, parking, and open spaces. The

requirements of a binding site plan are enforceable against any person acquiring an interest in any lot or parcel created pursuant to the plan.

Biodiversity Areas: Publicly owned lands that consist of habitat that is valuable to fish or wildlife, mostly comprised of native vegetation, and protected in city parks and open space, including but not limited to Mercerdale Park and Hillside, Upper Luther Burbank Park, Gallagher Hill Open Space, Southeast 53rd Open Space, Island Crest Park, Pioneer Park Open Space, and Ellis Pond.

Block Frontage: "Block frontage" refers to all property fronting on one side of a street that is between intersecting streets, or that is between a street and a required through-block connection. An intercepting street or required through-block connection determines only the boundary of the block frontage on the side of the street in which it intercepts.

Boat Ramp: An inclined structure upon which a watercraft is raised or pulled onto land or a dock.

Boatlift: A structure or device used to raise a watercraft above the waterline for secure moorage purposes.

Breakwater: A protective structure usually built offshore for the purpose of protecting the shoreline or harbor areas from wave action.

Buffer: A designated area: (1) contiguous to a steep slope or landslide hazard area intended to protect slope stability and attenuate landslide hazards; or (2) contiguous to a habitat conservation area, stream or wetland intended to protect the ecological functions and values of the habitat, stream or wetland.

Building: A structure having a roof, but excluding trailers, mobile homes, and all other forms of vehicles even though immobilized. Where this code requires, or where special authority granted pursuant to this code requires that a use shall be entirely enclosed within a building, this definition shall be qualified by adding "and enclosed on all sides."

Building Footprint: That portion of the lot that is covered by building(s).

Building Height:

1. Outside of the Town Center: The vertical distance measured from the average building elevation to the highest point of the roof structure excluding appurtenances. A mezzanine shall not be counted as a story for determining the allowable number of stories when constructed in accordance with the requirements of the construction codes set forth in MICC Title [17](#).
2. Within the Town Center: Building height within the Town Center (TC) zone shall be calculated pursuant to MICC [19.11.030\(A\)](#).

Building Pad: That portion of a lot on which a building may be located based on criteria set forth under the development code.

Bulkhead: A solid or open pile of rock, concrete, steel, timber or other materials erected parallel to, and normally erected at, the ordinary high water line for the purpose of protecting adjacent property from waves or currents.

C

Capital Improvement: Any development by the city upon property owned by or under the control of the city.

Care Services: The provision of rooms, meals, personal care and health monitoring assistance other than in special needs group housing. Other support may be provided as an adjunct to the provision of care services, including recreation, social, counseling, transportation and financial services. Examples include daycare services, nursing homes, assisted living facilities and retirement homes.

Carport: A covered parking area or an accessory portion of the main building, entirely open on two or more sides, which is used for parking or storage of private vehicles, trailers and boats, by the occupants of the primary building.

Catastrophic Loss: A loss which occurs as a result of accidental fire, storm, earthquake or any other natural disaster, or an act of vandalism, terrorism or war.

Change of Use: When a change in the specified land use of a property, building, or portion of a building occurs.

City: The city of Mercer Island, Washington.

City Arborist: The person designated by the code official to administer the provisions of Chapter [19.10](#) MICC.

City Department: Any division, subdivision or organizational unit of the city established by ordinance, rule or order.

City Street: "City street" means and includes the right-of-way of every principal arterial, secondary arterial, collector arterial or local street or portion thereof, which has been improved for and is used for vehicular travel within the city limits.

Civic and Social Organizations: Organizations primarily engaged in promoting the civic and social interests of their members. Illustrative examples include alumni associations, fraternal lodges, granges, and social clubs. Such organizations may operate bars and restaurants for their members if such uses are otherwise allowed within the zone.

Clearing: The act of destroying or removing trees or groundcover from any undeveloped or partially developed lot, public lands, or public right-of-way.

Code Official: The director of the community planning and development department for the city of Mercer Island or a duly authorized designee.

Commercial Zone: Any area located within a Town Center, business, planned business or multifamily zone, or any area located on property in a single-family zone containing a nonresidential use.

Concurrency Intersection: The intersection of two arterials.

Conditional Use: A use listed among those permitted in any given zone but authorized only after a conditional use permit has been granted.

Condominium: A multiple-family dwelling, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real property is not a condominium unless the undivided interests in the common elements are vested in the dwelling unit owners, and unless a declaration and a survey map and plans have been recorded.

Conifer Trees: Trees that are called evergreen, stay green all year, have needles or scales for leaves, and produce seeds in protective cones. This includes a few rare conifer trees that lose their needles in the fall such as: Tamarack or Larch, *Larix sp.*, Dawn Redwood, *Metasequoia glyptostroboides*, or Bald Cypress, *Taxodium distichum*.

Construction Costs: Construction costs shall mean all costs included in the average price per square foot of a building as set forth in the current Mercer Island Building Valuation Data Table on file with the code official.

Construction Work: Any construction or reconstruction creating more than 500 square feet of new gross floor area or impervious surface. Trees are considered cut as a result of construction work if done during the construction work, five years prior to commencement of the work or five years following completion of the work. For these purposes, commencement of the work shall be the date the initial permit for the work is issued by the city, and completion of the work shall be the date the city final a building permit.

Covered Moorage: A pier, dock, boatlift, series of piles, or other structure intended for moorage over which a roof or canopy is erected.

Critical Area Determination: An administrative action by the code official pursuant to MICC [19.15.010\(C\)\(4\)\(a\)](#) to allow reduction or averaging of a wetland or watercourse buffer, or alteration of a steep slope.

Critical Area Review 1: An approval allowing one or more actions listed in MICC [19.07.130](#), Modifications, within a critical area or buffer.

Critical Area Review 2: An approval allowing reduction or averaging of a wetland or watercourse buffer, or alteration of a geologically hazardous area.

Critical Area Study: A study prepared by a qualified professional on existing conditions, potential impacts and mitigation measures for a critical area, consistent with MICC [19.07.110](#).

Critical Areas: Geologic hazard areas, watercourses, wetlands and wildlife habitat conservation areas.

Critical Tree Area: An area on a lot where trees are provided certain protections that contains any of the following:

1. A geologic hazard area;
2. A watercourse or its buffer;
3. Wetlands or their buffer; or
4. Protected slope area.

Crown: The leaves and branches of a tree from the lowest branch on the trunk to the top.

Crown Cleaning: The removal of dead, dying, diseased, crowded, weakly attached, low-vigor branches, and watersprouts from a tree's crown.

Crown Raising: The removal of the lower branches of a tree in order to provide a height of up to eight feet for pedestrian clearance, up to 14 feet for equestrian clearance and up to 16 feet for vehicular clearance or such other increased height as deemed appropriate for clearance by the city arborist.

Crown Thinning: The selective removal of branches not to exceed more than 25 percent of the leaf surface to increase light penetration and air movement, and to reduce weight.

Crown Topping: The removal of the upper portion of the crown of a tree by cutting back young shoots to a bud or older branches or trunk to a stub or lateral branch not sufficiently large enough to assume the terminal role.

Cut or Cutting: The intentional cutting of a tree to the ground (excluding acts of nature), any practice or act which is likely to result in the death of or significant damage to the tree or any other removal of a part of a tree that does not qualify as pruning.

D

Day Care: A business that provides personal care, education and/or supervision of minor children age 12 or under for a fee or other consideration for periods lasting less than 24 hours.

Daylight Plane: "Daylight plane" refers to an inclined plane beginning at a stated height at the street-facing property line or edge of through-block connection above the grade of the sidewalk or through-block connection and extending into the site at a stated upward angle up to the maximum height limit consistent with MICC [19.11.030\(A\)\(7\)\(b\)](#) and Figure 5.

Development:

1. A piece of land that contains buildings, structures, and other modifications to the natural environment; or
2. The alteration of the natural environment through:
 - a. The construction or exterior alteration of any building or structure, whether above or below ground or water, and any grading, filling, dredging, draining, channelizing, cutting, topping, or excavation associated with such construction or modification.
 - b. The placing of permanent or temporary obstructions that interfere with the normal public use of the waters and lands subject to this code.
 - c. The division of land into two or more parcels, and the adjustment of property lines between parcels.

Development Proposal: The application for a permit or other approval from the city of Mercer Island relative to the use or development of land.

Development Proposal Site: The boundaries of the lot or lots for which an applicant has or should have applied for approval from the city of Mercer Island to carry out a development proposal.

Deviation: A minor modification of standard development code provisions that does not require the special circumstances necessary for granting a variance and which complies with the city's deviation criteria.

Diameter: The circumference of a tree divided by pi (3.14) and measured at a point four and one-half feet above the ground.

Dish Antenna: A parabolic antenna greater than 24 inches in diameter intended to send or receive signals to or from orbiting satellites or other communications systems.

Ditch: A long, narrow, human-built excavation that conveys storm water or irrigation water that is not identified by the state of Washington as a classified or unclassified stream.

Dock: A structure that floats on the surface of the water without piling supports but that is attached to land. Typically used for boat moorage, swimming, public access, and other activities that require access to deep water. This definition of docks shall also include "piers" for the purposes of this title.

Driveway: The vehicular access onto a lot containing one single-family dwelling, or the required vehicular access to, or through, an area designed for parking.

Dwelling:

1. **Dwelling Unit:** A part of a multiple-family dwelling containing only one kitchen, that houses not more than one family, plus any live-in household employees of such family (see also "Accessory Dwelling Unit (ADU)").
2. **Multiple-Family Dwelling:** A building, other than a single-family dwelling with an accessory dwelling unit, containing two or more dwelling units.
3. **Single-Family Dwelling:** A building designed and/or used to house not more than one family, plus any live-in household employees of such family.
4. **Single-Family Dwelling – Detached:** A single-family dwelling that is not attached to any other structure by any means and is surrounded by open space or yards.
5. **Single-Family Dwelling – Semi-Detached:** A single-family dwelling that is attached to another dwelling unit by a common vertical wall, with each dwelling unit located on a separate lot.

E

Easement: A grant of one or more of the property rights or privileges by the property owner to and/or for use or protection of a portion of land, by the public, a corporation or another person or entity, that runs with the land.

Ecological Functions or Shoreline Functions: The work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline's natural ecosystem.

Ecosystem-Wide Processes: The suite of naturally occurring physical and geologic processes of erosion, transport, and deposition; and specific chemical processes that shape landforms within a specific shoreline ecosystem and determine both the types of habitat and the associated ecological functions.

Eligible Facilities Request (6409 Wireless Communication Facility): Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:

1. Collocation of new transmission equipment;
2. Removal of transmission equipment; or
3. Replacement of transmission equipment.

Enhancement or Enhance: Actions performed to increase the functions of critical areas.

Erosion Hazard Areas: Those areas greater than 15 percent slope and subject to a severe risk of erosion due to wind, rain, water, slope and other natural agents including those soil types and/or areas identified by the U.S. Department of Agriculture's Natural Resources Conservation Service as having a "severe" or "very severe" rill and inter-rill erosion hazard.

Essential Public Facility: Any public facility or facilities owned or operated by a unit of local or state government, public or private utility, transportation company, or any other entity that provides a public service as its primary mission, and is difficult to site. Essential public facilities include those facilities listed in RCW [36.70A.200](#), and any facility that appears on the list maintained by the State Office of Financial Management under RCW [36.70A.200\(4\)](#).

"Essential public facilities" does not include special needs group housing as provided in MICC [19.06.080](#); public schools under the administration of Mercer Island School District No. 400; or city of Mercer Island facilities, except those facilities specifically listed in RCW [36.70A.200](#) or WAC [365-196-550](#).

Evening Peak Hour: The single hour with the highest traffic volumes on the roadway adjacent to the development between 4:00 pm and 6:00 pm.

Existing Grade: The surface level at any point on the lot prior to alteration of the ground surface.

Existing Wireless Communication Facility: A constructed tower or base station is existing for purposes of this section if it has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process; provided, that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

F

Facade: Any exterior wall of a structure, including projections from and attachments to the wall. Projections and attachments include balconies, decks, porches, chimneys, unenclosed corridors and similar projections.

Fair Market Value: The expected price at which a development can be sold to a willing buyer. For developments which involve nonstructural operations such as dredging, drilling, dumping, or filling, the fair market value is the expected cost of hiring a contractor to perform the operation or where no such value can be calculated, the total of labor, equipment use, transportation and other costs incurred for the duration of the permitted project (WAC [173-27-030\(8\)](#)).

Family: One or more persons (but not more than six unrelated persons) living together in a single housekeeping unit. For purposes of this definition, persons with familial status and persons with handicaps within the meaning of the Fair Housing Amendments Act (FHAA), [42 U.S.C. Sections 3602\(h\) and \(k\)](#) will not be counted as unrelated persons. The limitation on the number of unrelated residents set forth in this definition shall not prohibit the city from making reasonable accommodations, as required by the FHAA, [42 U.S.C. Section 3604\(f\)\(3\)\(B\)](#) and as provided in [MICC 19.01.030](#). The term “family” shall exclude unrelated persons who are not also handicapped or have familial status within the meaning of the FHAA who live together in social service transitional housing or special needs group housing.

Feasible: An action that is required to achieve project approval, such as a design requirement, development condition, mitigation, or preservation requirement, and that meets all of the following conditions:

1. The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;
2. The action provides a reasonable likelihood of achieving its intended purpose; and
3. The action does not physically preclude achieving the project’s primary intended legal use. In cases where these guidelines require certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant. In determining an action’s infeasibility, the reviewing agency may weigh the action’s relative public costs and public benefits, considered in the short- and long-term time frames.

Fence: A barrier composed of posts or piers connected by boards, rails, panels or wire, or a masonry wall.

Fill: The placement of earth material by artificial means.

Fill (SMP): The addition of soil, sand, rock, gravel, sediment, earth retaining structure, or other material to an area waterward of the OHWM, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land.

Financial and Insurance Services: Establishments primarily engaged in financial transactions and/or in facilitating financial transactions. Examples include banks, credit unions, stock brokers, and insurance underwriters.

Finished Grade: The surface level at any point on the lot at the conclusion of development.

Fish and Wildlife Habitat Conservation Areas:

1. Areas where state or federally listed endangered, threatened, sensitive, or candidate species, or species of local importance, have primary association;
2. Priority habitats and areas associated with priority species identified by the Washington State Department of Fish and Wildlife;
3. Areas used by bald eagles for foraging, nesting, and roosting, or within 660 feet of a bald eagle nest;
4. Watercourses and wetlands and their buffers; and
5. Biodiversity areas.

Fish Habitat: Habitat which is used by any fish at any life stage at any time of the year, including potential habitat likely to be used by fish which could be recovered by restoration or management and includes off-channel habitat.

Floating Home: A single-family dwelling unit constructed on a float, which is moored, anchored or otherwise secured in waters.

Floating Platform: A flat structure or device moored or anchored, not permanently secured by piles, which floats upon the water.

Floor: The continuous, supporting surface extending horizontally through a building or structure that serves as the level base of a room upon which a person stands or travels.

Formal Design Review: Design review conducted by the design commission.

Foster Family Home: A person or persons providing state-licensed foster care on a 24-hour-a-day basis to one or more, but not more than four, children, expectant mothers, or developmentally disabled persons in the family abode of the person or persons under whose direct care and supervision the child, expectant mother or developmentally disabled person is placed.

Foster Family Home, Large: At least two persons providing state-licensed foster care on a 24-hour-a-day basis to five or six children, expectant mothers or developmentally disabled persons in the family abode of the persons under whose direct care and supervision the child, expectant mother or developmentally disabled person is placed.

G

Garage: An accessory building or an accessory portion of the main building designed and/or used customarily for parking or storage of vehicles, trailers, and boats by the occupants of the main building, which does not meet the definition of a carport.

Geologically Hazardous Areas: Areas susceptible to erosion, sliding, earthquake, or other geological events based on a combination of slope (gradient or aspect), soils, geologic material, hydrology, vegetation, or alterations, including landslide hazard areas, erosion hazard areas and seismic hazard areas.

Geotechnical Professional: A practicing, geotechnical/civil engineer licensed as a professional civil engineer with the state of Washington, or a licensed engineering geologist with sufficient relevant training and experience as approved by the city.

Geotechnical Report or Geotechnical Analysis (SMP): A scientific study or evaluation conducted by a qualified expert that includes a description of the ground and surface hydrology and geology, the affected land form and its susceptibility to mass wasting, erosion, and other geologic hazards or processes, conclusions and recommendations regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties. Geotechnical reports shall conform to accepted technical standards and must be prepared by qualified

professional engineers or geologists who have professional expertise about the regional and local shoreline geology and processes.

Government Services: Services provided by the city, King County, the state of Washington, or the federal government including, but not limited to, fire protection, police and public safety activities, courts, administrative offices, and equipment maintenance facilities.

Groin: A structure used to interrupt sediment movement along the shore.

Gross Floor Area: The total square footage of floor area bounded by the exterior faces of the building.

1. The gross floor area of a single-family dwelling shall include:
 - a. The main building, including but not limited to attached accessory buildings.
 - b. All garages and covered parking areas, and detached accessory buildings with a gross floor area over 120 square feet.
 - c. That portion of a basement which projects above the lower of existing grade or finished grade as defined and calculated in Appendix B of this development code.
 - d. Staircases.
 - e. Decks that are attached to the second or third level of a single-family dwelling and are covered by a roof. For the purposes of calculating the gross floor area of covered decks, the entire deck area covered by the roof shall be accounted for as floor area, provided an 18-inch eave extending beyond the edge of the deck shall not be included in the gross floor area.
 - f. Space under stairways or stairwells that is used, for example, as a closet or storage space if that space meets the definition of "Floor."
2. The gross floor area of a single-family dwelling does not include:
 - a. Second- or third-level uncovered decks, or uncovered rooftop decks.
 - b. First-level covered decks and/or patios.
3. In the Town Center, gross floor area is the area included within the surrounding exterior finish wall surface of a building, excluding courtyards and parking surfaces.

Groundcover: Small plants such as salal, ferns, mosses, grasses or other types of vegetation which normally cover the ground and includes trees less than four inches in diameter measured at 24 inches above the ground level.

H

Handicaps, Persons With:

1. A person who has a physical or mental impairment which substantially limits one or more of such person's major life activities; or

2. A person with a record of having such an impairment; or
3. A person who is regarded as having such an impairment, but the term impairment does not include current, illegal use of or active addiction to a controlled substance.

Hard Structural Shoreline Stabilization: Shore erosion control practices using hardened structures that armor and stabilize the shoreline from further erosion. Hard structural shoreline stabilization typically uses concrete, boulders, dimensional lumber or other materials to construct linear, vertical or near-vertical faces that are located at or waterward of ordinary high water, as well as those structures located on average within five feet landward of OHWM. These include bulkheads, rip-rap, groins, retaining walls and similar structures.

Hardscape: The solid, hard elements or structures that are incorporated into landscaping. The hardscape includes, but is not limited to, structures other than buildings, paved areas other than driving surfaces, stairs, walkways, decks, patios, and similar constructed elements. The hardscape within landscaping is usually made up of materials that include, but are not limited to, wood, stone, concrete, gravel, artificial turf, and permeable pavements or pavers, and similar materials. Hardscape does not include solid, hard elements or structures that are covered by a minimum of two feet of soil intended for softscape (for example, a septic tank or detention tank covered with at least two feet of soil and planted shrubs is not hardscape). Hardscape areas do not include driving surfaces or buildings.

Hazardous Waste: Those solid wastes designated by [40](#) CFR Part [261](#) and regulated by the State Dangerous Waste Regulations, Chapter [173-303](#) WAC.

1. **Hazardous Waste Storage:** The holding of hazardous waste for a temporary period.
2. **Hazardous Waste Treatment:** The physical, chemical or biological processing of hazardous waste to make such waste nondangerous or less dangerous, safer for transport, amenable for energy or material resource recovery, amenable for storage, or reduced in volume.

Healthcare Services: Establishments providing outpatient health care services directly or indirectly to ambulatory patients. Examples include offices for doctors, dentists, optometrists, and mental health professionals. This use does not include medical and diagnostic laboratories.

Hotel/Motel: A facility offering temporary accommodations for a fee to the general public and which may provide additional services such as restaurants, meeting rooms, entertainment, and recreational facilities.

Hydric Soils: Soil that is wet long enough to periodically produce reduced oxygen conditions, thereby influencing the growth of plants.

I

Impervious Surfaces: Includes without limitation the following:

1. Buildings – the footprint of the building and structures including all eaves;
2. Vehicular use – driveways, streets, parking areas and other areas, whether constructed of gravel, pavers, pavement, concrete or other material, that can reasonably allow vehicular travel;

3. Sidewalks – paved pedestrian walkways, sidewalks and bike paths;
4. Recreation facilities – decks, patios, porches, tennis courts, sport courts, pools, hot tubs, and other similar recreational facilities;
5. Miscellaneous – any other structure or hard surface which either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development, or causes water to run off the surface in greater quantities or at an increased rate of flow from present flow rate under natural conditions prior to development.

J

Jetty: A barrier used to protect areas from accumulations of excess sediment.

K

Kennel:

1. Any lot on which six or more dogs, cats, or other small animals over the age of four months are kept for any reason; or
2. Any lot on which any number of dogs, cats, or other small animals over the age of four months are kept for sale, are bred to produce off-spring for sale, or are boarded for a fee or other consideration.

Kitchen: An identifiable area inside a building for the cooking, refrigeration and storage of food that includes, but is not limited to, the following improvements:

1. Ventilation;
2. A sink;
3. A combination of appliances used to cook food including a stove, range, oven or microwave;
4. A refrigerator; and
5. A counter or cupboards.

L

Landscaping: The arrangement and planting of softscape elements (e.g., trees, grass, shrubs and flowers), and the installation of hardscape elements (e.g., placement of fountains, patios, street furniture and ornamental concrete or stonework).

Landslide Hazard Area, Deep-Seated: Landslide hazard area with a failure depth more than 15 feet thick.

Landslide Hazard Area, Shallow: Landslide hazard area with a failure depth of 15 feet or less thick.

Landslide Hazard Areas: Those areas subject to landslides based on a combination of geologic, topographic, and hydrologic factors, including:

1. Areas of historic failures;
2. Areas with all three of the following characteristics:
 - a. Slopes steeper than 15 percent; and
 - b. Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and
 - c. Springs or ground water seepage;
3. Areas that have shown evidence of past movement or that are underlain or covered by mass wastage debris from past movements;
4. Areas potentially unstable because of rapid stream incision and stream bank erosion; or
5. Steep Slope. Any slope of 40 percent or greater calculated by measuring the vertical rise over any 30-foot horizontal run.

Landward: Any point located inland from the ordinary high water mark.

Lateral Line: The extension waterward of a property line into Lake Washington beyond the ordinary high water mark. How property lines extend waterward from the ordinary high water mark is an area of misconception. If the title does not clearly state the location of the property lines waterward from the ordinary high water mark, waterfront owners are not allowed to unilaterally project the upland boundaries out into the shorelands (waterward). There are no statutes defining the direction of the lateral lines waterward from the ordinary high water mark. The Supreme Court has the final word to decide location of lateral line on case-by-case basis.

Light Rail Facilities: A public rail transit line, including all ancillary facilities such as transit power substations, that operates at grade level, above grade level, on a bridge or in a tunnel and that provides high capacity, regional transit service owned or operated by a regional transit authority authorized under Chapter [81.112](#) RCW. A regional light rail transit system will be designed to cross I-90 right-of-way.

Lot: A designated parcel, tract or area of land established by plat, subdivision, or as otherwise permitted by law to be used, developed or built upon as a unit.

1. Corner Lot: A lot located at the junction of and abutting two or more intersecting streets.
2. Upland Lot: A lot having no frontage on Lake Washington.
3. Waterfront Lot: A lot having frontage on Lake Washington.

Lot Area: The area contained within the established boundaries of a lot. The lot area includes, but is not limited to, areas encumbered by critical areas, shorelines, and public or private easements.

Lot Area, Net: The area contained within the established boundaries of a lot, less any area used for public or private vehicular access easements, excluding that portion of the easement used for a driveway access to the encumbered lot.

For example, the net lot area of a lot encumbered by a private vehicle access easement with an area of 1,000 square feet and of which 400 square feet of the vehicle access easement is used for a driveway to a home on the encumbered lot is the area within the established boundaries of the lot less 600 square feet.

Lot, Conforming: A lot that conforms with the applicable zoning ordinance standards as to size, width, depth and other dimensional regulations.

Lot Coverage, Maximum:The maximum area of a residentially zoned lot that may be covered by a combination of buildings, including eaves and roof overhangs, and vehicular driving surfaces.

Lot Depth: For lots with exactly one front lot line, one rear lot line, and two side lot lines, lot depth is the distance as measured from the midpoint of the front property line to the midpoint of the rear property line. For all other lots, lot depth is determined by the mean average distance measured from the front lot line to the rear lot line. To calculate mean average distance, draw lines perpendicular to the front property line at two-foot intervals. The lengths of the perpendicular lines, which extend through the building pad to the rear lot line, shall be added together and the sum of the lengths shall be divided by the total number of perpendicular lines.

Lot, Irregular: A legally established lot that (1) is not rectangular and (2) does not meet minimum width, depth, and area standards required by the zone in which the lot is located.

Lot, Large: A lot that contains sufficient area, and is of sufficient dimension, to be subdivided. Large lots shall contain a minimum net lot area as follows:

1. R-8.4: 16,800 square feet.
2. R-9.6: 19,200 square feet.
3. R-12: 24,000 square feet.
4. R-15: 30,000 square feet.

Lot Line Revisions: An adjustment of boundary lines between existing lots that does not create any additional lots and which does not reduce the area of any existing lot to the point that it fails to meet minimum development code requirements for area and dimensions.

Lot, Nonconforming: See Nonconforming Lot.

Lot Width: For lots with exactly one front lot line, one rear lot line, and two side lot lines, lot width is the distance between the two midpoints of side lot lines. For all other lots, lot width is determined by a lot width circle within the boundaries of the lot; provided, that no access easements are included within the lot width circle.

Lots, Contiguous: Contiguous lots are two or more lots that share a common property line; provided, the existence of a public or private roadway, utility and/or similar easement shall not be deemed to divide or make land noncontiguous if land on both sides of such roadway, utility and/or similar easement is commonly owned or controlled.

M

Major New Construction: Construction from bare ground or an enlargement or alteration that changes the exterior of an existing structure that costs in excess of 50 percent of the structure's assessed value. Single-family development is excluded from this definition.

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 square feet; or
 - d. An increase in the existing lot coverage of more than 100 square feet.

Major Site Feature: The public development amenities listed in MICC [19.11.060\(B\)](#) that an applicant of major new construction in the Town Center must provide in order to be allowed building height over the base building height of two stories.

Manufacturing: An establishment engaged in the mechanical or chemical transformation of materials or substances into new products. Uses which create or involve the production of hazardous materials or objectionable noise, odor, dust, smoke, cinders, gas fumes, noise, vibration, refuse or water-carried waste are not allowed. Manufacturing uses are limited to 10,000 square feet or less of gross floor area.

Master Site Plan: The comprehensive, long range plan intended to guide the growth and development on a parcel of land that shows the existing and proposed conditions on the site including topography, vegetation, drainage, flood plains, wetlands, waterways, landscaping, open spaces, walkways, means of ingress and egress, circulation, utilities, structures and buildings, and any other information reasonably necessary for the design commission to make an informed decision about development of the site.

Mean Low Water: The level of Lake Washington during the fall and winter when the water level is lowered to minimize winter storm damage to lakeside properties. Mean low water is one and one-half feet lower than ordinary high water.

Minor Exterior Modification: Any exterior modification to an existing development or site that does not constitute major new construction.

Minor Modification to Site Plan: Modification of lot lines which does not violate any development or design standards, or increase the intensity or density of uses; reconfiguration of parking lots or landscape areas which does not reduce the required amount of parking or landscaping or negatively impact the screening from adjacent residential property; change in tree and landscape plant material that is less than four-inch caliber in size; modifications of the building envelope which do not increase the building footprint or which constitute minor exterior modification; relocation of fire lanes or utility lines.

Minor Site Feature: The public development amenities listed in MICC [19.11.060\(A\)](#) that an applicant of major new construction in the Town Center must include regardless of the building's height.

Mitigation or Mitigate: The use of any or all of the following actions in a critical area:

1. Avoiding the impact by not taking a certain action;
2. Minimizing the impact by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce the impact;
3. Rectifying the impact by repairing, rehabilitating or restoring the affected critical area;
4. Minimizing or eliminating the impact over time by preservation or maintenance operations;
5. Compensating for the impact by replacing, enhancing or providing substitute critical areas; or
6. Monitoring the impact and taking appropriate corrective measures including any combination of the measures listed in subsections (1) through (5) of this definition.

Mixed Use: Development with a variety of complementary and integrated uses, such as, but not limited to, residential, office, retail, public, or recreation.

Monitoring: Evaluating the impacts of alterations to critical areas and assessing the performance of required mitigation measures through the collection and analysis of data.

Moorage Facility: Any device or structure used to secure a boat or a vessel, including piers, docks, piles, lift stations or buoys.

Morning Peak Hour: The single hour with the highest traffic volumes on the roadway adjacent to the development between 7:00 am and 9:00 am.

Mortuary Services: The preparation of the dead for burial or internment including conducting funerals, transporting the dead, and selling caskets and related merchandise.

Museums and Art Exhibitions: The exhibition of objects of historical, cultural, and/or educational value that are not offered for sale.

N

Native Growth Protective Easement (NGPE): An easement granted to the city for the protection of native vegetation within a critical area or buffer.

Native Vegetation: Vegetation identified by the Washington Native Plant Society or the United States Department of Agriculture as being native to Washington State. Native vegetation does not include noxious weeds.

No Net Loss: An ecological concept whereby conservation losses in one geographic or otherwise defined area are equaled by conservation gains in function in another area.

Nonconforming Lot: A lot that has less than the minimum area, width and depth required by the current code for the zone in which the lot is located.

Nonconforming Site, Legal: A developed building site that lawfully existed prior to September 26, 1960, or conformed to the applicable code requirements that were in effect regarding site development at the time it was developed but no longer conforms to the current regulations of the zone in which it is situated due to subsequent changes in code requirements.

Nonconforming Structure, Legal: A structure that lawfully existed prior to September 26, 1960, or conformed to the applicable code requirements in effect at the time it was constructed but no longer conforms to the current regulations of the zone in which it is situated due to subsequent changes in code requirements.

Nonconforming Use, Legal: The use of a structure, site or of land that lawfully existed prior to September 26, 1960, or conformed to the applicable code requirements in effect at the time it was commenced but no longer conforms to the current regulations of the zone in which it is situated due to subsequent changes in code requirements.

Noxious Weed: Any plant which when established is highly destructive, competitive, or difficult to control by cultural or chemical practices (see Chapter [5.10](#) RCW). The state noxious weed list in Chapter [16-750](#) WAC, as compiled by the State Noxious Weed Control Board, together with the King County noxious weed and weeds of concern lists, is the officially adopted list of noxious weeds for the city.

Nursing Home: An establishment as defined, regulated and licensed by Chapter [18.51](#) RCW that provides care to persons who through illness or infirmity are not capable of caring for themselves.

O

Office Uses: The use of a room or group of rooms for conducting the affairs of a business, profession, service, or government and generally furnished with desks, tables, files and communication equipment.

Open Record Hearing: A hearing conducted by the authorized body that creates the city's record through testimony and submission of evidence and information, under procedures prescribed by city ordinance and/or adopted by the hearing body.

Open Space: Open space functions as protection of natural resources and biodiversity, recreation spaces, development of neighborhood gathering spaces, and promotion of public health benefits. Open space areas are left predominantly in a vegetated state to create urban separators and greenbelts, and:

1. Sustain native ecosystems, connect and increase protective buffers for environmentally critical areas; or
2. Provide a visual contrast to continuous development, reinforce community identity and aesthetics; or
3. Provide links between important environmental or recreational resources.

Ordinary High Water Mark (OHWM): The point on the shore that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter in accordance with

permits issued by a local government or the Department of Ecology; provided, that in any area where the OHWM cannot be found, the OHWM adjoining fresh water shall be the line of mean high water, or as amended by the state. To determine OHWM for a shoreline armoring project, a site-specific determination by a qualified professional is required. For determination of OHWM for measuring building setbacks, the OHWM corresponds with a lake elevation of 18.6 feet above sea level, when based on North American Vertical Datum of 1988 (NAVD 88).

Ordinary Repairs and Maintenance: An activity in response to the effects of aging or ordinary use, wear and tear that restores the character, scope, size, footprint or design of a serviceable area, structure, or land use to its previously existing, authorized or undamaged condition; however, this is not intended to allow total replacement, substitution or reconstruction of a nonconforming structure. Activities that change the character, size, footprint or scope of a project beyond the original shall not be considered ordinary repairs and maintenance and shall result in loss of nonconforming status.

P

Parking: A public or private area, under, within or outside a building or structure, designed and used for parking motor vehicles including parking lots, garages, and driveways. For the purposes of this definition only:

1. "Parking structure" shall mean a building or structure consisting of more than one level and used for the temporary parking and storage of motor vehicles.
2. "Underground parking" shall mean the location of that portion of the parking structure located below the existing grade of the ground abutting the structure.

Patio Home: A single-family dwelling on a separate parcel with open spaces on three sides and with a court.

Pavers: A paver or pavement that allows rain and/or surface water runoff to pass through it and reduce runoff from a site and surrounding areas. Pavers include porous pavement, porous pavers, and permeable interlocking concrete pavement as described in the Washington State Department of Ecology Stormwater Management Manual, as now exists or hereafter amended.

Pedestrian-Oriented Uses: Uses that stimulate pedestrian activity along the sidewalk frontage of a building. Uses include, but are not limited to, small scale retail, restaurants and theaters.

Pedestrian Walkway: A walkway used exclusively for pedestrian trafficway, which may be covered or enclosed.

Person: An individual, partnership, corporation, or association.

Personal Services: A business that provides services relating to personal grooming and health. Uses include barber shops, hair stylists, spas, fitness centers and nail salons.

Pier: A structure that projects over and is raised above the water but is attached to land, and that is used for boat moorage, swimming, fishing, public access, float plane moorage, or similar activities requiring access to deep water.

Pile: A timber or section of concrete placed into the ground to serve as a support or moorage.

Places of Worship: A church, synagogue, mosque, or other institution that people regularly attend to participate in or hold religious services, meetings, or other religious activities.

Pole Extender: An object affixed between a utility pole and pole-top mounted equipment (e.g., a small cell antenna) for the purpose of increasing the height of the pole-top mounted equipment above the pole.

Premises: A piece of land with or without improvements, including but not limited to a building, room, enclosure, vehicle, vessel or other place thereon.

Private Property: Any property other than public property.

Professional, Scientific, and Technical Services: Establishments that specialize in performing professional, scientific, and technical activities for others. These activities require a high degree of expertise and training and include legal services; accounting, bookkeeping, and payroll services; architectural, engineering, and specialized design services; computer services; consulting services; research services; real estate sales services; advertising services; photographic services; translation and interpretation services; veterinary services; and other professional, scientific, and technical services.

Protected Slope Area: Any area within a 40-foot radius of the base of the subject tree if there is any point within that area that is at least 12 feet higher or lower than the base of the tree.

Prune or Pruning: The pruning of a tree through crown thinning, crown cleaning, windowing or crown raising but not including crown topping of trees or any other practice or act which is likely to result in the death of or significant damage to the tree.

Public Access: A means of physical approach to and along the shoreline, or other area, available to the general public. Public access may also include visual approach.

Public Access Pier or Boardwalk: A structure which is constructed waterward of the ordinary high water mark and intended for public use.

Public Facility: A building, structure, or complex used by the general public. Examples include but are not limited to assembly halls, schools, libraries, theaters and meeting places.

Public Meeting: A meeting, hearing workshop, or other public gathering of people to obtain comments from the public on a proposed project permit prior to the city's decision. A public meeting does not include an open record hearing.

Public Property: Any property under direct ownership or control of the city of Mercer Island. This includes, but is not limited to, parks, green belts, open spaces, rights-of-way, and ground around public buildings but excludes Interstate 90 and any property owned by the state of Washington.

Public Tree: Any tree located on public property.

Q

Qualified Arborist: An individual with relevant education and training in arboriculture or urban forestry, having the International Society of Arboriculture (ISA) Tree Risk Assessment Qualification and one of the following credentials:

1. ISA certified arborist;
2. ISA certified arborist municipal specialist;
3. ISA board certified master arborist;
4. American Society of Consulting Arborists (ASCA) registered consulting arborist;
5. Society of American Foresters (SAF) certified forester for forest management plans.

For tree retention reviews associated with a development proposal, a qualified arborist must have, in addition to the above credentials, a minimum of three years' experience working directly with the protection of trees during construction and have experience with the likelihood of tree survival after construction. A qualified arborist must also be able to prescribe appropriate measures for the preservation of trees during land development. Any provision in this title referring to using an arborist shall be interpreted to require using a qualified arborist.

Qualified Professional: A person with experience, training and competence in the pertinent discipline. A qualified professional must be licensed to practice in the state of Washington in the related professional field, if such field is licensed. If not licensed, a qualified professional must have a national certification in the pertinent field. If neither licensing nor national certification in the field exists, the minimum qualification should be a bachelor's degree with 10 years of related professional work, or master's degree in the field and three years of related professional work. Minimum qualifications for specific fields of practice shall include but not be limited to the following:

1. Arborists must be qualified arborists as defined in this section.
2. Professional for geologic hazard areas must be licensed and endorsed in the state of Washington as a geotechnical engineer or engineering geologist.
3. Professional for watercourses and other fish and wildlife habitat must have a degree in biology, environmental planning, natural science, stream ecology or related field and the minimum years of experience, listed above, related to the subject habitat or species.
4. Professionals for vegetation restoration planning where specific expertise for wetlands, watercourses or other fish and wildlife habitat is not required must have a degree in botany, environmental planning, natural science, ecology, landscape architecture or a related field and the minimum years of experience, listed above, with an emphasis on restoration ecology and vegetation management associated with critical areas and buffer. Professionals must demonstrate a minimum of three years of experience with the type of critical area or buffer for which the critical area report is being submitted.
5. Professionals for wetlands must be currently certified as a professional wetland scientist (PWS) with the Society of Wetland Scientists or meet the minimum education and years of experience, listed above, as a wetlands professional.

6. Minimum qualifications of professionals for other disciplines shall be consistent with the minimum qualifications defined above and specific to the discipline identified.

R

Reasonable Best Efforts: In cases where the code requires “reasonable best efforts” to comply with standards, the burden of proving that reasonable best efforts have been taken, and compliance is infeasible, is on the applicant. In determining whether reasonable best efforts have been taken the code official may weigh the applicant’s actions to comply with the applicable standard and the action’s relative costs to the applicant and public benefits, considered in the short- and long-term time frames. The code official may also evaluate whether an applicant’s prior actions have contributed to the applicant’s inability to comply with the applicable standard.

Reasonable Use: A legal concept that has been and will be articulated by federal and state courts in regulatory takings and substantive due process cases. The decisionmaker must balance the public’s interests against the owner’s interests by considering the nature of the harm the regulation is intended to prevent, the availability and effectiveness of alternative measures, the reasonable use of the property remaining to the owner and the economic loss borne by the owner. Public interest factors include the seriousness of the public problem, the extent to which the land involved contributes to the problem, the degree to which the regulation solves the problem, and the feasibility of less oppressive solutions. A reasonable use exception set forth in MICC [19.07.140](#) balances the public interests against the regulation being unduly oppressive to the property owner.

Recreation: In the Town Center, recreation includes a place designed and equipped for the conduct of leisure-time activities or sports.

Recreational Area: For single-family and multifamily residential zones, an area, including facilities and equipment, for recreational purposes, such as a swimming pool, tennis court, a golf course, or a playground.

1. **Commercial Recreational Area:** A recreational area maintained and operated for a profit.
2. **Noncommercial Recreational Area:** A recreational area maintained and operated by a nonprofit club or organization with specified limitations upon the number of members or limited to residents of a block, subdivision, neighborhood, community or other specific area of residence for the exclusive use of members and their guests.
3. **Recreational Area, Private:** A recreational area maintained by an individual for the sole use of his/her household and guests, located or adjacent to his/her residence, not for profit or in connection with any business operated for profit.
4. **Semi-Private Waterfront Recreational Area:** A separate shoreline property interest established in fee simple or by easement in favor of one or more upland lots which is used for water-related recreational purposes.

Regulated Improvements: Any development of any property within the city, except:

1. Property owned or controlled by the city; or
2. Single-family dwellings and the buildings, structures and uses accessory thereto; or

3. Wireless communications structures, including associated support structures and equipment cabinets; or
4. Small cell facilities or small cell networks.

Remodel: Interior or exterior alteration of a structure that includes, but is not limited to, the following:

1. Transforming the structure of any home or building;
2. Change in floor plan layout;
3. Combining rooms (removing walls); or
4. The addition or removal of the exterior or interior of any structure.

Repair Services: The repair and maintenance of personal and household goods, including locksmithing, appliance repair, furniture reupholstery, and shoe repair.

Replacement Tree: Any tree that is planted in order to satisfy the tree replacement requirements of a tree permit.

Residential Care Facility: A facility, licensed by the state that cares for at least five but not more than 15 people with functional disabilities, that has not been licensed as an adult family home pursuant to Chapter [70.128](#) RCW.

Residential Dwelling: A home, abode or place that is used for human habitation.

Residential Uses: For purposes of the shoreline management provisions of this code, residential uses shall mean those uses allowed in the R-8.4, R-9.6, R-12, R-15, MF-2L, and MF-2 zones.

Restaurant: An establishment where food and drink are prepared and consumed. Such establishment may also provide catering services.

Restoration of Ecological Functions (SMP): The reestablishment or upgrading of impaired ecological shoreline processes or functions. This may be accomplished through measures including but not limited to revegetation, removal of intrusive shoreline structures and removal or treatment of toxic materials. Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions.

Restoration or restore: Actions performed to return a critical area to a state in which its functions approach its unaltered state as closely as possible.

Retail Use: An establishment engaged in selling goods or merchandise and rendering services incidental to the sale of such goods.

1. Small Scale Retail: A retail establishment occupying a space of 20,000 square feet or less.
2. Large Scale Retail: A retail establishment occupying more than 20,000 square feet.
3. Outdoor Retail: The display and sale primarily outside a building or structure of the following: vehicles, garden supplies, gas, tires, boats, aircraft, motor homes, building and landscape materials, and lumber yards.

Retaining Walls/Rockerries: A wall of masonry, wood, rock, metal, or other similar materials or combination of similar materials that bears against earth or other fill surface for purposes of resisting lateral or other forces in contact with the wall, and/or the prevention of erosion.

Retirement Home: An establishment operated for the purpose of providing domiciliary care or assisted living for a group of persons who by reason of age are unable to or do not desire to provide such care for themselves and who are not in need of medical or nursing aid, except in cases of temporary illness.

Right-of-way: Land acquired by reservation, dedication, prescription or condemnation, and intended to be used by a road, sidewalk, utility line or other similar public use.

Riprap: Hard angular carry rock or other similar materials used for erosion control and/or land or bank stabilization.

Rooming House: A home or other facility, other than special needs group housing or social service transitional housing as provided in MICC [19.06.080\(A\)](#) and (B), that provides room or room and board to seven or more persons unrelated to the operator, and does not include persons with handicaps or persons with familial status within the meaning of the FHAA.

S

Salmonid: A member of the fish family Salmonidae.

Scale: The height, width and general proportions of a structure or features of a structure in relationship to its surroundings. Human or pedestrian scale is building form or site design that is intimate, comfortable and understandable from the perspective of an individual walking.

Seismic Hazard Areas: Seismic hazard areas are areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, soil liquefaction or surface faulting.

Senior Citizen Housing: Dwelling units which are used exclusively for housing persons 60 years of age and older.

SEPA Rules: Chapter [197-11](#) WAC adopted by the Department of Ecology, as now or hereafter amended.

Service: An establishment primarily engaged in providing assistance as opposed to products. Examples include but are not limited to personal services, business, financial and insurance services, mortuary services, tailors, healthcare services, educational services, repair services, amusement services, membership organizations, and other professional, scientific, and technical services.

Service Stations: Establishments retailing automotive fuels (e.g., gasoline, diesel fuel, gasohol) and automotive oils. These establishments may also provide repair and maintenance services for automotive vehicles and/or convenience store retailing.

Setback: The distance between a development and other feature such as a property line or critical areas buffer.

Shared Pier: A dock or pier which is shared by two or more waterfront lots.

Shorelands: Lake Washington, its underlying land, associated wetlands, and those lands extending landward 200 feet from its ordinary high water mark (OHWM).

Shoreline Areas and Shoreline Jurisdiction: All “shorelines of the state” and “shorelands” as defined in RCW [90.58.030](#).

Shoreline Master Program: The comprehensive use plan for a described area, the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW [90.58.020](#) and the applicable guidelines. As provided in RCW [36.70A.480](#), the goals and policies of a shoreline master program for a county or city approved under Chapter [90.58](#) RCW shall be considered an element of the county’s or city’s comprehensive plan. All other portions of the shoreline master program for a county or city adopted under Chapter [90.58](#) RCW, including use regulations, shall be considered a part of the county’s or city’s development regulations.

Shrub: Any living woody plant species characterized by having multiple vertical or semiupright branches originating at or near the ground and is known to achieve a typical mature height of less than 15 feet. Species include without limitation, rhododendrons, pyramidalis, laurel, boxwood and other ornamental shrubs.

Sign: Any series of letters, figures, design symbols, lights, structure, billboard, trademark or device intended or used to attract attention to any activity, service, place, subject, person, firm, corporation, or thing. Excluded are official traffic signs or signals, public notices, and governmental flags.

Sign, Directional: A sign which contains only the name and location of a use located elsewhere and intended for guidance only.¹

Slope: A measurement of the incline of a lot or other piece of land calculated by subtracting the lowest existing elevation from the highest existing elevation, and dividing the resulting number by the shortest horizontal distance between these two points.

“Small cell” shall mean “small cell facility.”

Small Cell Deployment: The construction and installation of either small cell facilities, small cell networks, or both small cell facilities and small cell networks, together with the installation of the fiber network supporting the small cell facility and small cell network.

“Small cell facility” and “small cell network” are defined in accordance with RCW [80.36.375](#).

Small Tree: Any conifer tree that is less than six feet tall or any deciduous tree with a diameter of six inches or less.

Social Service Transitional Housing: Noninstitutional group housing facilities for unrelated persons, other than special needs group housing or rooming houses, that are privately or publicly operated, including those facilities required to be licensed by the state or federal governments as well as those that may not be required to be licensed, that provide temporary and transitional housing to meet community social service needs including, but not limited to, work-release facilities and other housing facilities serving as an alternative to incarceration, halfway houses, emergency shelters, homeless shelters, domestic violence shelters and other such crisis intervention

facilities. Social service transitional housing excludes institutional facilities that typically cannot be accommodated in a single-family residential structure.

Soft Structural Shoreline Stabilization Measures: Shore erosion control and restoration practices that contribute to restoration, protection or enhancement of shoreline ecological functions. Soft shoreline stabilization typically includes a mix of gravels, cobbles, boulders, logs and native vegetation placed to provide shore stability in a nonlinear, sloping arrangement.

Softscape: The living or unhardened elements that are incorporated into landscaping. The softscape generally includes plants, flower beds, tree retention areas, uncovered dirt, compost or mulched areas, wetlands, and wetland or watercourse buffers.

Solar Energy System: Any device, structure, mechanism, or series of mechanisms which use solar radiation as an energy source for heating, cooling, or electrical energy.

Special Needs Group Housing: Noninstitutional group housing that primarily supports unrelated persons with handicaps or persons protected by familial status within the meaning of the FHAA, but not including individuals whose tenancy would constitute a direct threat to the health and safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. Special needs group housing includes, but is not limited to, foster family homes, adult family homes and residential care facilities as provided in Chapter [70.128](#) RCW, but excludes facilities that typically cannot be accommodated in a single-family residential structure such as hospitals, nursing homes, assisted living facilities and detention centers.

Stealth Design: Wireless communications facilities designed to blend into the surrounding environment as determined by the code official. Examples of stealth design include architecturally screened roof-mounted antennas, facilities integrated into architectural elements, and facilities designed to blend with or be integrated into light poles, utility poles, trees, steeples, or flag poles.

Steep Slope: Any slope of 40 percent or greater calculated by measuring the vertical rise over any 30-foot horizontal run. Steep slopes do not include artificially created cut slopes or rockeries.

Story: Story is that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a usable or unused under-floor space is more than six feet (1,829 mm) above grade for more than 50 percent of the total perimeter, or is more than 12 feet (3,658 mm) above grade at any point, such usable or unused under-floor space shall be considered as a story. Grade is measured as the lowest point on the property within a distance of five feet from the exterior wall.

Street: An improved or unimproved public or private right-of-way or easement which affords or could be capable of affording vehicular access to property.

1. Collector Arterial: A street designed to collect and distribute traffic from major arterials to the local access streets. The collector arterial is similar to a local access street except for stop and yield privileges over a local access street and restrictions for on street parking.

2. Local Access Street: A street designated for direct access to properties, and which is tributary to the arterial system.
3. Major Arterial Street: A street designed to collect and distribute large volumes of traffic from the freeway, Town Center and less important arterial streets. This type of arterial normally is designed to expedite through traffic.
4. Second Arterial Street: A street designed to collect and distribute traffic from the freeway or major arterials and less important streets.
5. Driveways are not streets.

Street Furniture: Structures located in streets, rights-of-way, parking lots, or other similar open spaces on a site, including, but not limited to, light standards, utility poles, newspaper stands, bus shelters, planters, traffic signs, traffic signals, benches, guard rails, rockeries, retaining walls, mail boxes, litter containers, and fire hydrants.

Structural Alteration: Any change, addition, or modification to elements of a structure that are or relate to load-bearing members or the stability of the structure (as distinguished from screening or ornamental elements). Examples of structural alterations include, but are not limited to, any change in the supporting members of a structure, such as foundations, studs in exterior or bearing walls or bearing partitions, columns, beams, headers, girders, joists or rafters. Replacement of exterior cladding and replacement of glazing in existing openings shall not be considered structural alteration.

Structure: That which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

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.

Substantial Change, Wireless Communication Facility: A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

1. For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10 percent or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10 percent or more than 10 feet, whichever is greater.
 - a. Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of

originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act;

2. For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than 20 feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;
3. For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no preexisting ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10 percent larger in height or overall volume than any other ground cabinets associated with the structure;
4. It entails any excavation or deployment outside the current site;
5. It would defeat the concealment elements of the eligible support structure; or
6. It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is noncompliant only in a manner that would not exceed the thresholds identified in [47 CFR Section 1.40001\(b\)\(7\)\(i\)](#) through [\(b\)\(7\)\(iv\)](#).

Substantial Development: A development of which the total cost or fair market value exceeds \$2,500 or any development that materially interferes with the normal public use of the water or shorelines of the state, except as specifically exempted pursuant to RCW [90.58.030\(3e\)](#) and WAC [173-27-040](#).

Support Structure: See "Wireless Communication Support Structure."

T

Teen Dance: Any dance that is open to the public and is held and conducted directly or indirectly for a profit, or requires a monetary contribution from any of the persons admitted or from a parent, and which permits the entry of persons under the age of 20 years. Teen dance does not include noncommercial dances sponsored by an accredited educational institution, nor does it include a dance sponsored by churches or other religious institutions, community organizations or other nonprofit tax-exempt organizations.

Temporary Encampment: A group of persons temporarily residing in one or more temporary structures, except for recreational purposes, and located at a place of worship.

Temporary Encampment Managing Organization: A group or organization that has the capacity to organize and manage a temporary encampment. A temporary encampment "managing organization" may be the same entity as the temporary encampment sponsor.

Temporary Encampment Sponsor: A place of worship which owns the property or has an ownership interest in the property, for which a temporary encampment is to be located, and that has an agreement with the temporary encampment managing organization to provide basic services and support for the residents of a temporary encampment and liaison with the surrounding community and joins with the managing organization in an application for a temporary encampment permit. A “sponsor” may be the same entity as the managing organization.

Temporary Erosion and Sediment Control Plan: A plan that details the location and type of temporary physical, structural and/or managerial practices an applicant will use to reduce erosion, prevent pollution of water with sediment and comply with the adopted storm water manual pursuant to Chapter [19.09](#) MICC.

Tenant Improvement: Changes made to the interior of a commercial or industrial property by its owner to accommodate the needs of a tenant such as floor and wall coverings, ceilings, partitions, air conditioning, fire protection, and security. A tenant improvement is not a change of use of the building or tenant space; however, it often occurs when a new tenant occupies a building.

Theaters: Establishments primarily engaged in either (1) producing live presentations involving the performances of actors and actresses, singers, dancers, musical groups and artists, and other performing artists or (2) exhibiting motion pictures or videos.

Top and Toe of Slope: The points at which a critical slope decreases to less than 30 percent slope. The upper edge is the “top” of the slope and the bottom is the “toe.”

Townhouse: A single-family dwelling unit at least two stories in height constructed in a group of two or more attached dwelling units in which each unit extends from foundation to roof and with open space on at least two sides and a separate means of ingress and egress.

Tract: A piece of land designated and set aside as either public or private open space. No dwelling shall be constructed on the tract, and only those structures that are in keeping with the tract’s use as open space shall be allowed.

Trailer: A vehicle without motor power designed to be drawn by a motor vehicle and to be used for human habitation or for carrying persons and property, including a mobile home or trailer coach and any self-propelled vehicle having a body designed for or converted to the same uses as an automobile trailer without motor power.

Transmission Equipment: Equipment that facilitates transmission for any commission licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

Transportation Concurrency: Facilities or strategies that achieve the city’s level of service standards adopted in the comprehensive plan that:

1. Are planned and fully funded in the city’s six-year transportation improvement program to be installed and fully constructed within six years of the issuance of a certificate of occupancy for the development; or

- 2. Will be available and complete no later than six years after issuance of a certificate of occupancy for the development, and the applicant and/or the city provides a financial commitment which is in place at the time the development is approved by the code official.

Transportation Level of Service (LOS): A measurement of the quality of traffic flow and congestion at intersections and roadways. LOS is defined by the amount of delay experienced by vehicles traveling through an intersection or on a street. LOS is defined and calculated per the methods in the Highway Capacity Manual (HCM), Sixth Edition or newer.

Transportation Model: The use of a computer model by the city to forecast traffic flow, evaluate intersection impacts, and determine level of service and available capacity at concurrency intersections.

Transportation/Utility: A facility primarily engaged in providing transportation services, including automobile service stations and transit stations; the generation, transmission, distribution of energy; or the collection of waste and recycled materials.

Tree: Any living woody plant species other than a shrub, characterized by one main trunk or few dominant trunks and many branches, known to achieve a typical mature height of at least 15 feet.

Tree, Exceptional: A tree or group of trees that because of its unique historical, ecological, or aesthetic value constitutes an important community resource. An exceptional tree is a tree that is rare or exceptional by virtue of its size, species, condition, cultural/historic importance, age, and/or contribution as part of a tree grove. Trees with a diameter of more than 36 inches, or with a diameter that is equal to or greater than the diameter listed in the Exceptional Tree Table, are considered exceptional trees:

Exceptional Tree Table

Species	Threshold Diameter
Native Species	
Oregon ASH – <i>Fraxinus latifolia</i>	2 ft
Quaking ASPEN – <i>Populus tremuloides</i>	1 ft
Paper BIRCH – <i>Betula papyrifera</i>	1 ft 8 in
CASCARA – <i>Rhamnus purshiana</i>	8 in
Western Red CEDAR – <i>Thuja plicata</i>	2 ft 6 in
Pacific CRABAPPLE – <i>Malus fusca</i>	1 ft
Pacific DOGWOOD – <i>Cornus nuttallii</i>	6 in
Douglas FIR – <i>Pseudotsuga menziesii</i>	2 ft 6 in

Exceptional Tree Table

Species	Threshold Diameter
Grand FIR – <i>Abies grandis</i>	2 ft
Black HAWTHORN – <i>Crataegus douglasii</i>	6 in
Western HEMLOCK – <i>Tsuga heterophylla</i>	2 ft
MADRONA – <i>Arbutus menziesii</i>	6 in
Bigleaf MAPLE – <i>Acer macrophyllum</i>	2 ft 6 in
Dwarf or Rocky Mountain MAPLE – <i>Acer glabrum</i> var. Douglasii	6 in
Vine MAPLE – <i>Acer circinatum</i>	8 in
Oregon White or Garry OAK – <i>Quercus garryana</i>	6 in
Lodgepole PINE – <i>Pinus contorta</i>	6 in
Shore PINE – <i>Pinus contorta</i> ‘contorta’	1 ft
Western White PINE – <i>Pinus monticola</i>	2 ft
Western SERVICEBERRY – <i>Amelanchier alnifolia</i>	6 in
Sitka SPRUCE – <i>Picea sitchensis</i>	6 in
WILLOW (All native species) – <i>Salix</i> sp. (<i>Geyeriana</i> var <i>meleina</i> , <i>eriocephala</i> ssp. <i>mackenzieana</i> , <i>Hookeriana</i> , <i>Piperi</i> , <i>Scouleriana</i> , <i>sitchensis</i>)	8 in
Pacific YEW – <i>Taxus brevifolia</i>	6 in
Nonnative Species	
Orchard (Common) APPLE – <i>Malus</i> sp.	1 ft 8 in
European ASH – <i>Fraxinus excelsior</i>	1 ft 10 in
Green ASH – <i>Fraxinus pennsylvanica</i>	2 ft 6 in
Raywood ASH – <i>Fraxinus oxycarpa</i>	2 ft

Exceptional Tree Table

Species	Threshold Diameter
European BEECH – <i>Fagus sylvatica</i>	2 ft 6 in
European White BIRCH – <i>Betula pendula</i>	2 ft
Atlas CEDAR – <i>Cedrus atlantica</i>	2 ft 6 in
Deodor CEDAR – <i>Cedrus deodara</i>	2 ft 6 in
Incense CEDAR – <i>Calocedrus decurrens</i>	2 ft 6 in
Flowering CHERRY – <i>Prunus</i> sp. (<i>serrula</i> , <i>serrulata</i> , <i>sargentii</i> , <i>subhirtella</i> , <i>yedoensis</i>)	1 ft 11 in
Lawson CYPRESS – <i>Chamaecyparis lawsoniana</i>	2 ft 6 in
Kousa DOGWOOD – <i>Cornus kousa</i>	1 ft
Eastern DOGWOOD – <i>Cornus florida</i>	1 ft
American ELM – <i>Ulmus americana</i>	2 ft 6 in
English ELM – <i>Ulmus procera</i>	2 ft 6 in
GINGKO – <i>Ginkgo biloba</i>	2 ft
Common HAWTHORN <i>Crataegus laevigata</i>	1 ft 4 in
Washington HAWTHORN – <i>Crataegus phaenopyrum</i>	9 in
European HORNBEAM – <i>Carpinus betulus</i>	1 ft 4 in
KATSURA – <i>Cercidiphyllum japonicum</i>	2 ft 6 in
Littleleaf LINDEN – <i>Tilia cordata</i>	2 ft 6 in
Honey LOCUST – <i>Gleditsia triacanthos</i>	1 ft 8 in
Southern MAGNOLIA – <i>Magnolia grandiflora</i>	1 ft 4 in
Paperbark MAPLE – <i>Acer griseum</i>	1 ft
Japanese MAPLE – <i>Acer palmatum</i>	1 ft
Red MAPLE – <i>Acer rubrum</i>	2 ft 1 in

Exceptional Tree Table

Species	Threshold Diameter
Sugar MAPLE – <i>Acer saccharum</i>	2 ft 6 in
Sycamore MAPLE – <i>Acer pseudoplatanus</i>	2 ft
MONKEY PUZZLE TREE – <i>Araucaria araucana</i>	1 ft 10 in
MOUNTAIN-ASH – <i>Sorbus aucuparia</i>	2 ft 5 in
Pin OAK – <i>Quercus palustris</i>	2 ft 6 in
Red OAK – <i>Quercus rubra</i>	2 ft 6 in
Callery PEAR – <i>Pyrus calleryana</i>	1 ft 1 in
Austrian Black PINE – <i>Pinus nigra</i>	2 ft
Ponderosa PINE – <i>Pinus ponderosa</i>	2 ft 6 in
Scot's PINE – <i>Pinus sylvestris</i>	2 ft
London PLANE – <i>Platanus acerifolia</i>	2 ft 6 in
Flowering PLUM – <i>Prunus cerasifera</i>	1 ft 9 in
Coastal REDWOOD – <i>Sequoia sempervirens</i>	2 ft 6 in
Giant SEQUOIA – <i>Sequoiadendron giganteum</i>	2 ft 6 in
Japanese SNOWBELL – <i>Styrax japonica</i>	1 ft
American SWEETGUM – <i>Liquidambar styraciflua</i>	2 ft 3 in
TULIP TREE – <i>Liriodendron tulipifera</i>	2 ft 6 in
WILLOW (All nonnative species)	2 ft

Tree, Grove: A grove means a group of eight or more trees each 10 inches or more in diameter that form a continuous canopy. Trees that are part of a grove shall also be considered exceptional trees, unless they also meet the definition of a hazardous tree.

Tree, Hazardous: Any tree that receives an 11 or 12 rating under the International Society of Arboricultural rating method set forth in Hazard Tree Analysis for Urban Areas (copies of this manual are available from the city arborist) and may also mean any tree that receives a 9 or 10 rating, at the discretion of the city arborist.

Tree, Large (Regulated): Any tree with a diameter of 10 inches or more, and any tree that meets the definition of an exceptional tree.

Tree Permit: A permit issued by the city arborist under Chapter [19.10](#) MICC.

Tree, Small: Any tree with a diameter of less than 10 inches. Small trees do not include any tree that meets the definition of an exceptional tree.

Trips: The number of vehicle trips generated by a land use in the morning peak hour or evening peak hour as determined by the latest edition of the Institute of Transportation Engineers Trip Generation Manual, or other authorized source approved by the code official.

Trips, Net New: The number of vehicle trips generated by a new development, change in use, expansion or modification requiring a development permit minus the trips generated by the previous use of the site within the one year immediately prior to the development permit application. No credit shall be given for vehicle trip ends from sites/structures that have been vacant for more than one year or for trips from any unpermitted or illegal development.

U

Undergrounded Utility Areas: A geographic area where utilities that are commonly located aboveground (e.g., electrical power, cable and telephone lines, etc.) have been placed entirely underground, and associated support structures (e.g., wooden utility poles or guy poles) have been removed.

Uplighting: Illumination of an object by methods that project light upward and onto the object to be illuminated, primarily to enhance visual interest at night.

Usable Signal: An unscrambled signal, which when acquired or transmitted by use of a properly installed, maintained and operated antenna, is at least equal in sound or picture quality to that received from local commercial radio or television stations or by way of cable.

Utilities: Facilities providing infrastructure services by a public utility or private utility regulated by the state through fixed wires, pipes, or lines. Such facilities may include water, sewer, storm water facilities (lines, ditches, swales and outfalls) and private utilities such as natural gas lines, telecommunication lines, cable communication lines, electrical lines and other appurtenances associated with these utilities. "Utilities" does not include wireless communication facilities, but does include small cell facilities.

V

Variance: A modification of standard development code provisions based on special circumstances and complying with the city's variance criteria.

Vegetative Cover: All significant vegetation (excluding exotic or invasive species) in a critical tree area, the existence or loss of which will have a material impact on the critical tree area.

Vehicle: An instrument capable of movement, by means of wheels, skids or runners of any kind, along roadways, paths, or other ways of any kind, specifically including, but not limited to, all forms of automotive vehicles, buses,

trucks, cars and vans, and all forms of trailers or mobile homes of any size whether capable of supplying their own motor power or not, regardless whether the primary purpose of such instrument is or is not the conveyance of persons or objects. A vehicle includes all such instruments even if immobilized in any way and for any period of time.

W

Warehouse: A building used primarily for the storage of goods and materials, including facilities available to the public for a fee.

Warehousing: The storage of goods and materials, including facilities available to the public for a fee.

Water-Dependent: A use or a portion of a use which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations. Examples of water-dependent uses may include ship cargo terminal loading areas, ferry and passenger terminals, barge loading facilities, ship building and dry docking, marinas, aquaculture, float plane facilities and sewer outfalls.

Watercourses: A course or route, formed by nature and generally consisting of a channel with a bed, banks, or sides throughout substantially all its length, along which surface waters, with some regularity (annually in the rainy season), naturally and normally flow in draining from higher to lower lands. This definition does not include irrigation and drainage ditches, grass-lined swales, canals, storm water runoff devices, or other courses unless they are used by fish or to convey waters that were naturally occurring prior to construction.

Watercourses shall be classified according to the following types:

1. Type S, which include all waters, within their bankfull width, as inventoried as "shorelines of the state," which are regulated by the city's Shoreline Master Program pursuant to Chapter [90.58](#) RCW.
2. Type F, which include segments of natural waters other than Type S waters, which are within the bankfull widths of defined channels and periodically inundated areas of their associated wetlands, or within lakes, ponds, or impoundments having a surface area of one-half acre or greater at seasonal low water and which in any case contain fish habitat.
3. Type Np, which include all segments of natural waters within the bankfull width of defined channels that are perennial nonfish habitat streams. Perennial streams are flowing waters that do not go dry any time of a year of normal rainfall and include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow.
4. Type Ns, which include all segments of natural waters within the bankfull width of the defined channels that are not Type S, F, or Np waters. These are seasonal, nonfish habitat streams in which surface flow is not present for at least some portion of a year of normal rainfall and are not located downstream from any stream reach that is a Type Np water. Ns waters must be physically connected by an aboveground channel system to Type S, F, or Np waters.
5. Piped watercourses, which are pipes or other conveyances through which surface waters, with some regularity (annually in the rainy season), naturally and normally flow in draining from higher to lower lands.

This definition does not include irrigation and drainage ditches, grass-lined swales, canals, storm water runoff devices, or other courses unless they are used by fish or to convey waters that were naturally occurring prior to construction.

Waterfront Structure: Docks, piers, wharves, floats, mooring piles, anchor buoys, bulkheads, submerged or overhead wires, pipes, cables, and any other object passing beneath, through or over the water beyond the line of ordinary high water.

Waterward: Any point located in Lake Washington, lakeward from the ordinary high water mark.

Wetland Classification System: Those categories set forth in the Washington State Wetland Rating System for Western Washington, Publication No. 14-06-029 dated October 2014. A summary of the classification system is provided below:

1. *Category I.* Category I wetlands are those that meet the following criteria:
 - a. Wetlands that are identified by scientists as high quality or high function wetlands;
 - b. Bogs larger than one-half acre;
 - c. Mature and old-growth forested wetlands larger than one acre; or
 - d. Wetlands that are undisturbed and contain ecological attributes that are impossible to replace within a human lifetime.
2. *Category II.* Category II wetlands are not defined as Category I wetlands and meet the following criteria:
 - a. Wetlands that are identified by scientists as containing “sensitive” plant species;
 - b. Bogs between one-quarter and one-half acre in size; or
 - c. Wetlands with a moderately high level of functions.
3. *Category III.* Category III wetlands do not satisfy Category I or II criteria, and have a moderate level of functions. These wetlands generally have been disturbed in some ways, and are often less diverse or more isolated from other natural resources than Category II wetlands.
4. *Category IV.* Category IV wetlands do not satisfy Category I, II or III criteria; and have the lowest level of functions; and are often heavily disturbed.

Wetland Manual: Identification of wetlands and delineation of their boundaries shall be done in accordance with the most recently approved Army Corps of Engineers wetlands delineation manual and applicable regional supplements.

Wetlands: Areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal conditions do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands do not include artificial wetlands, such as irrigation and drainage ditches, grass-lined swales, canals, landscape amenities, and detention facilities or those wetlands, created after

July 1, 1990, that were unintentionally created as a result of the construction of a road or street unless the artificial wetlands were created to mitigate the alteration of a naturally occurring wetland. For identifying and delineating a regulated wetland, the city will use the Wetland Manual.

Windowing: The selective removal of branches not to exceed more than 25 percent of the leaf surface while retaining the symmetry and natural form of the tree in order to increase views and light penetration.

Wireless Communication Facility Site: For towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.

Wireless Communication Facility Tower: Any structure built for the sole or primary purpose of supporting any commission licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

Wireless Communications:

1. **Attached Wireless Communications Facility (Attached WCF):** An antenna array that is attached to an existing building or structure, including utility poles, with any accompanying attachment structure, transmission cables, and an equipment cabinet which may be located either inside or outside of the attachment building or structure.
2. **Wireless Communications Antenna Array (Antenna Array):** One or more rods, panels, discs or similar devices used for the transmission or reception of radio frequency signals, which may include omni-directional antenna (whip), directional antenna (panel), and parabolic antenna (dish).
3. **Wireless Communications Facility (WCF):** Any unstaffed facility for the transmission and/or reception of radio frequency signals usually consisting of antennas, an equipment cabinet, transmission cables, and a support structure to achieve the necessary elevation.
4. **Wireless Communications Support Structure (Support Structure):** A structure designed and constructed specifically to support an antenna array, and may include a monopole tower, lattice tower, guy-wire support tower or other similar structures. Any structure which is used to attach an attached WCF to an existing building or structure (hereinafter "attachment structure") shall be excluded from the definition of and regulations applicable to support structures.
5. **Wireless communications do not include small cells for the purposes of this title.**

Y

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. Except as otherwise specified, the edge of the yard is measured from a fixed point or line on the lot, such

as the edge of an easement, that affords or could be capable of affording vehicular access or from a property line. Determination of front, rear, and side yards is established in MICC [19.02.020\(C\)\(2\)](#). (Ord. 19C-21 § 1 (Att. A); Ord. 19C-05 § 2 (Exh. B); Ord. 19C-04 § 1 (Exh. A); Ord. 19C-02 § 3 (Exh. A); Ord. 18C-12 § 3; Ord. 18C-08 § 1 (Att. A); Ord. 18C-05 § 1 (Att. A); Ord. 17C-20 § 2; Ord. 17C-15 § 1 (Att. A); Ord. 17C-12 § 11; Ord. 16C-06 § 4 (Exh. A); Ord. 15C-02 § 3; Ord. 13C-12 § 3; Ord. 11C-11 § 2; Ord. 11C-05 § 3; Ord. 10C-09 § 1; Ord. 10C-06 § 7; Ord. 10C-01 § 1; Ord. 08C-01 § 9; Ord. 07C-02 § 1; Ord. 06C-04 § 2; Ord. 05C-16 § 2; Ord. 05C-12 § 4; Ord. 04C-12 § 17; Ord. 04C-08 § 11; Ord. 04C-02 § 2; Ord. 03C-08 § 11; Ord. 03C-01 § 5; Ord. 02C-10 § 4; Ord. 02C-09 § 5; Ord. 02C-05 § 5; Ord. 02C-04 § 8; Ord. 02C-01 § 2; Ord. 01C-06 § 1; Ord. 99C-13 § 1).

The Mercer Island City Code is current through Ordinance 21C-03, passed February 16, 2021.

Disclaimer: The City Clerk's Office has the official version of the Mercer Island City Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

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