



PLANNING COMMISSION CITY OF MERCER ISLAND

PCB 25-07
March 26, 2025
Regular Business

AGENDA BILL INFORMATION

TITLE:	PCB 25-07: New Dwelling Units in Existing Buildings (HB 1042)	<input checked="" type="checkbox"/> Discussion Only <input type="checkbox"/> Action Needed: <input type="checkbox"/> Motion <input type="checkbox"/> Recommendation
RECOMMENDED ACTION:	Discussion only. No action necessary.	

STAFF:	Adam Zack, Principal Planner
EXHIBITS:	1. Comparison of Proposed Development Code Amendment and RCW 35A.21.440.

EXECUTIVE SUMMARY

The purpose of this PCB is to provide the Planning Commission (PC) with an initial briefing on proposed development code amendments to comply with recent changes in the state law pertaining to allowing new dwelling units to be constructed in existing buildings ([RCW 35A.21.440](#)).

- On April 14, 2023, the Washington State Legislature enacted Engrossed Substitute House Bill (HB) 1042;
- HB 1042 established [RCW 35A.21.440](#), which sets requirements for how code cities can regulate the development of new housing in existing buildings;
- [RCW 35A.21.440](#) requires that all code cities, including Mercer Island, allow the development of new housing in existing buildings subject to conditions;
- The City has established development regulations in Title 19 Mercer Island City Code (MICC);
- The development regulations in Title 19 MICC must be amended to comply with [RCW 35A.21.440](#); and
- The City Council included a project to comply with recent statewide legislation, including HB 1042, on the 2024 Annual Docket.

BACKGROUND

In 2023, the WA State Legislature enacted House Bill 1042 (HB 1042). This bill enacted [RCW 35A.21.440 – New housing in existing buildings—Prohibitions on local regulation](#). This state law requires code cities in Washington to allow new dwelling units to be added to existing buildings subject to specific conditions. Mercer Island must update its code to comply with these changes by June 30, 2025 (RCW 35A.21.440(1)(a)). If the City does not amend the development code to comply with HB 1042 the state law supersedes local regulations (RCW 35A.21.440(1)(b)).

SUMMARY OF AMENDMENTS EXPECTED

This project is expected to result in the amendment of the following sections of the Mercer Island Comprehensive Plan or the development code established in Title 19 Mercer Island City Code (MICC):

Comprehensive Plan

- No amendments expected

Title 19 MICC

- MICC 19.06.XXX – New Dwelling Units in Existing Buildings. [*NEW SECTION*]

PUBLIC PARTICIPATION

The project will utilize the standard public participation required for every development code amendment as established in Title 19 MICC. The standard public participation process includes the following steps:

- Opportunity for the public to comment during public access at first PC meeting
- Public hearing notice and public comment period at least 30 days prior to the PC public hearing
- SEPA Comment Period
- Public hearing at second PC meeting
- Public access at City Council's first reading
- Public access at City Council's second reading

PUBLIC MEETINGS

The project is expected to be completed with four public meetings. The PC will have a first touch in March and in April, hold a public hearing and make its recommendation to the City Council. The City Council is expected to hold a first reading in May and the second reading and adoption in June. As noted above, the City must enact regulations before June 30, 2025 to avoid state regulations superseding local requirements. Please note that the City Council agenda is subject to change and all dates are approximate as of the preparation of this scope.

Planning Commission

- March 26 – First Touch
- April 23 – Public Hearing, Second Touch, and Recommendation

City Council

- May 20 – First Reading
- June 3 – Second Reading and Adoption

RCW 35A.21.440 – NEW HOUSING IN EXISTING BUILDINGS – PROHIBITIONS ON LOCAL REGULATION

The requirements for regulation of new housing in existing buildings in code cities established by HB 1042 are codified in [RCW 35A.21.440 – New housing in existing buildings – Prohibitions on local regulation](#). RCW 35A.21.440 states:

- (1)(a) Code cities must adopt or amend by ordinance, and incorporate into their development regulations, zoning regulations, and other official controls the requirements of subsection (2) of this section for buildings that are zoned for commercial or mixed use no later than six months after its next periodic comprehensive plan update required under RCW 36.70A.130.
- (b) The requirements of subsection (2) of this section apply and take effect in any code city that has not adopted or amended ordinances, regulations, or other official controls as required under this section by the timeline in (a) of this subsection and supersede, preempt, and invalidate any conflicting local development regulations.
- (2) Through ordinances, development regulations, zoning regulations, or other official controls as required under subsection (1) of this section, code cities may not:

-
- (a) Impose a restriction on housing unit density that prevents the addition of housing units at a density up to 50 percent more than what is allowed in the underlying zone if constructed entirely within an existing building envelope in a building located within a zone that permits multifamily housing, provided that generally applicable health and safety standards, including but not limited to building code standards and fire and life safety standards, can be met within the building;
 - (b) Impose parking requirements on the addition of dwelling units or living units added within an existing building, however, cities may require the retention of existing parking that is required to satisfy existing residential parking requirements under local laws and for nonresidential uses that remain after the new units are added;
 - (c) With the exception of emergency housing and transitional housing uses, impose permitting requirements on the use of an existing building for residential purposes beyond those requirements generally applicable to all residential development within the building's zone;
 - (d) Impose design standard requirements, including setbacks, lot coverage, and floor area ratio requirements, on the use of an existing building for residential purposes beyond those requirements generally applicable to all residential development within the building's zone;
 - (e) Impose exterior design or architectural requirements on the residential use of an existing building beyond those necessary for health and safety of the use of the interior of the building or to preserve character-defining streetscapes, unless the building is a designated landmark or is within a historic district established through a local preservation ordinance;
 - (f) Prohibit the addition of housing units in any specific part of a building except ground floor commercial or retail that is along a major pedestrian corridor as defined by the code city, unless the addition of the units would violate applicable building codes or health and safety standards;
 - (g) Require unchanged portions of an existing building used for residential purposes to meet the current energy code solely because of the addition of new dwelling units within the building, however, if any portion of an existing building is converted to new dwelling units, each of those new units must meet the requirements of the current energy code;
 - (h) Deny a building permit application for the addition of housing units within an existing building due to nonconformity regarding parking, height, setbacks, elevator size for gurney transport, or modulation, unless the code city official with decision-making authority makes written findings that the nonconformity is causing a significant detriment to the surrounding area; or

-
- (i) Require a transportation concurrency study under RCW 36.70A.070 or an environmental study under chapter 43.21C RCW based on the addition of residential units within an existing building.
 - (3) Nothing in this section requires a code city to approve a building permit application for the addition of housing units constructed entirely within an existing building envelope in a building located within a zone that permits multifamily housing in cases in which the building cannot satisfy life safety standards.
 - (4) For the purpose of this section, "existing building" means a building that received a certificate of occupancy at least three years prior to the permit application to add housing units.

ISSUE/DISCUSSION

Staff has prepared an initial draft of a new section of Chapter 19.06 MICC to comply with RCW 35A.21.440. The proposed draft is provided below with a citation of the RCW in brackets following each provision to help connect the proposed development code section with the requirement from the state law. The bracketed citations are for reference only and will be removed from the draft prior to adoption. A more detailed explanation of the connection between the proposed code section and the RCW is provided in Exhibit 1.

19.06.XXX – NEW DWELLING UNITS IN EXISTING BUILDINGS

- A. *Applicability.* This section applies to any development of new dwelling units in an existing building in a zone where commercial and mixed land uses are allowed. For the purposes of this section, “existing building” means a building that received a certificate of occupancy at least three (3) years prior to the submittal of a permit application to add housing units. [RCW 35A.21.440(1)(a) and (4)]
- B. *Permitted Use.* Development of new dwelling units in an existing building is a residential land use permitted in the TC, PBZ, C-O, B, and MF-2 zones. [RCW 35A.21.440(1)(a)]
- C. *Maximum density.* A maximum residential density established for the underlying zone may be exceeded by up to fifty (50) percent than what is permitted within the underlying zone provided that the development is constructed entirely within the existing building envelope in a building within a zone which permits multifamily housing, provided that generally applicable health and safety standards, including but not limited to building code standards, and fire and life safety standards, can be met within the building. [RCW 35A.21.440(2)(a)]
- D. *Parking.* New parking spaces are not required for dwelling units added to an existing building. The code official may condition approval to require the retention of existing parking spaces provided the total number of spaces to be retained is less than or equal to the number of spaces that would be required for multifamily uses in the subject zone. [RCW 35A.21.440(2)(b)]
- E. *Permit Required.* Development of new dwelling units in an existing building is permitted outright in any zone allowing commercial or mixed land uses unless the subject zone requires a land use permit for residential uses, in which case the permit requirement in the subject zone controls. [RCW 35A.21.440(2)(c)]
- F. *Development Standards.* Development of new dwelling units in an existing building is subject to the development standards, including building height, setbacks, lot coverage, and floor area ratio

requirements, applicable to residential development within the subject zone. [RCW 35A.21.440(2)(d) & (e)]

G. *Design Standards.* New dwelling units in existing buildings are exempt from the design standards in Chapters 19.11 and 19.12 MICC, with the following exceptions:

1. The street standards established in MICC 19.11.120. [RCW 35A.21.440(2)(E)]
2. Required ground floor street frontage uses established in MICC 19.11.020. [RCW 35A.21.440(2)(F)]

H. *Transportation Concurrency and Environmental Review.* Development of new residential units in existing buildings is not subject to the transportation concurrency requirements in Chapter 19.20 MICC and environmental review required in Chapter 19.21 MICC. [RCW 35A.21.440(2)(i)]

Review Process

On March 26, staff will brief the Planning Commission on the initial draft code amendment. Following the study session, individual Commissioners can propose amendments to the initial draft for the Planning Commission to consider during deliberations following the public hearing scheduled for April 23. Proposed amendments should be sent to adam.zack@mercerisland.gov by 5:00 pm on April 4, 2025. As a reminder of OPMA rules, please do not copy other Planning Commissioners.

NEXT STEPS

The Planning Commission's Public Hearing on this matter will be held on April 23, 2025.

RECOMMENDED ACTION

Discussion only. No action necessary.

Table 1. Comparison of Proposed New Development Code Section and RCW 35A.21.440.

RCW Section #	RCW 35A.21.440	Draft Code Section	Proposed New Development Code	Staff Commentary
1(a)	Code cities must adopt or amend by ordinance, and incorporate into their development regulations, zoning regulations, and other official controls the requirements of subsection (2) of this section for buildings that are zoned for commercial or mixed use no later than six months after its next periodic comprehensive plan update required under RCW 36.70A.130.	A	<i>Applicability.</i> This section applies to any development of new dwelling units in an existing building in a zone where commercial and mixed land uses are allowed. For the purposes of this section, “existing building” means a building that received a certificate of occupancy at least three (3) years prior to the submittal of a permit application to add housing units.	The definition of “existing building” comes from RCW 35A.21.440(4) below. The definition is added here so it only applies to this use whereas a definition added to Chapter 19.16 MICC would apply in every situation. This definition is particular to this circumstance so applying it throughout the code could have unintended consequences.
		B	<i>Permitted Use.</i> Development of new dwelling units in an existing building is a residential land use permitted in the TC, PBZ, C-O, B, and MF-2 zones. [RCW 35A.21.440(1)(a)]	Commercial uses are allowed in the following zones: C-O, B, PBZ, and MF-2 (Chapter 19.04 MICC) Mixed-uses are allowed in the TC zone. (Chapter 19.11 MICC)
1(b)	The requirements of subsection (2) of this section apply and take effect in any code city that has not adopted or amended ordinances, regulations, or other official controls as required under this section by the timeline in (a) of this subsection and supersede, preempt, and invalidate any conflicting local development regulations.			No development code amendments needed to address RCW 35A.21.440(1)(b)
2	Through ordinances, development regulations, zoning regulations, or other official controls as required under subsection (1) of this section, code cities may not:			The next 8 subsections will address RCW 35A.21.440(2)
2(a)	[Code cities may not] Impose a restriction on housing unit density that prevents the addition of housing units at a density up to 50 percent more than what is allowed in the underlying zone if constructed entirely within an existing building envelope in a building located within a zone that permits multifamily housing, provided that generally applicable health and safety standards, including but not limited to building code standards and fire and life safety standards, can be met within the building;	C	<i>Maximum density.</i> A maximum residential density established for the underlying zone may be exceeded by up to fifty (50) percent than what is permitted within the underlying zone provided that the development is constructed entirely within the existing building envelope in a building within a zone which permits multifamily housing, provided that generally applicable health and safety standards, including but not limited to building code standards, and fire and life safety standards, can be met within the building.	This provision would only affect zones with an established maximum density <i>and</i> allows multifamily housing. The only zone that would be subject to this section is the MF-2 zone. The maximum density in MF-2 zone has a maximum density of 38 dwelling units per acre. If a development were allowed an additional 50 percent, the maximum density would then be 57 dwelling units per acre. Note, this would only apply if the development is entirely within the existing building envelope. The City’s other zone subject to the proposed section B above that also allows multifamily residential uses is the TC zone. TC does not have an established maximum density.
2(b)	[Code cities may not] Impose parking requirements on the addition of dwelling units or living units added within an existing building, however, cities may require the retention of existing parking that is required to satisfy existing residential parking requirements under local laws and for nonresidential uses that remain after the new units are added;	D	<i>Parking.</i> New parking spaces are not required for dwelling units added to an existing building. The code official may condition approval to require the retention of existing parking spaces provided the total number of spaces to be retained is less than or equal to the number of spaces that would be required for multifamily uses in the subject zone.	
2(c)	With the exception of emergency housing and transitional housing uses, [code cities may not] impose permitting requirements on the use of an existing building for residential purposes beyond those requirements generally applicable to all residential development within the building's zone;	E	<i>Permit Required.</i> Development of new dwelling units in an existing building is permitted outright in any zone allowing commercial or mixed land uses unless the subject zone requires a land use permit for residential uses, in which case the permit requirement in the subject zone controls.	Permitting a use outright means that a land use permit is not required. Uses permitted outright are still required to get other necessary permits such as building permits. A development would still be subject to the design standards in that zone.

RCW Section #	RCW 35A.21.440	Draft Code Section	Proposed New Development Code	Staff Commentary
2(d)	[Code cities may not] Impose design standard requirements, including setbacks, lot coverage, and floor area ratio requirements, on the use of an existing building for residential purposes beyond those requirements generally applicable to all residential development within the building's zone;	F	<i>Development Standards.</i> Development of new dwelling units in an existing building is subject to the development standards, including building height, setbacks, lot coverage, and floor area ratio requirements, applicable to residential development within the subject zone.	Proposed subsection F helps to address both RCW 35A.21.440(2)(d) and (e)
2(e)	[Code cities may not] Impose exterior design or architectural requirements on the residential use of an existing building beyond those necessary for health and safety of the use of the interior of the building or to preserve character-defining streetscapes, unless the building is a designated landmark or is within a historic district established through a local preservation ordinance;	G	<i>Design Standards.</i> New dwelling units in existing buildings are exempt from the design standards in Chapters 19.11 and 19.12 MICC, with the following exceptions: 1. The street standards established in MICC 19.11.120, and 2. Required ground floor street frontage uses established in MICC 19.11.020.	Proposed subsections G(1) and G(2) are drafted to address both RCW 35A.21.440(2)(e) and (f).
2(f)	[Code cities may not] Prohibit the addition of housing units in any specific part of a building except ground floor commercial or retail that is along a major pedestrian corridor as defined by the code city, unless the addition of the units would violate applicable building codes or health and safety standards			
2(g)	[Code cities may not] Require unchanged portions of an existing building used for residential purposes to meet the current energy code solely because of the addition of new dwelling units within the building, however, if any portion of an existing building is converted to new dwelling units, each of those new units must meet the requirements of the current energy code;			A section addressing nonconformity to the energy code is not necessary. The City has adopted the WA State Energy Code by reference in Chapter 17.09 MICC. Section C505.1 of the WA State Energy Code states: “[...] Buildings or spaces undergoing a change in space conditioning, change in occupancy or use shall conform to the provisions of this code without requiring the unaltered portion of the existing building to comply with this code. [...]”
2(h)	[Code cities may not] Deny a building permit application for the addition of housing units within an existing building due to nonconformity regarding parking, height, setbacks, elevator size for gurney transport, or modulation, unless the code city official with decision-making authority makes written findings that the nonconformity is causing a significant detriment to the surrounding area; or			No development code amendments are necessary to address RCW 35A.21.440(2)(h).
2(i)	[Code cities may not] Require a transportation concurrency study under RCW 36.70A.070 or an environmental study under chapter 43.21C RCW based on the addition of residential units within an existing building.	H	<i>Transportation Concurrency and Environmental Review.</i> Development of new dwelling units in existing buildings is not subject to the transportation concurrency requirements in Chapter 19.20 MICC and environmental review required in Chapter 19.21 MICC.	
3	Nothing in this section requires a code city to approve a building permit application for the addition of housing units constructed entirely within an existing building envelope in a building located within a zone that permits multifamily housing in cases in which the building cannot satisfy life safety standards.			No development code amendments are necessary to address RCW 35A.21.440(3).
4	For the purpose of this section, "existing building" means a building that received a certificate of occupancy at least three years prior to the permit application to add housing units.			This definition incorporated into proposed Section A above