



**BUSINESS OF THE CITY COUNCIL  
CITY OF MERCER ISLAND**

**AB 6664  
April 15, 2025  
Regular Business**

**AGENDA BILL INFORMATION**

|                            |  |  |
|----------------------------|--|--|
| <b>TITLE:</b>              | AB 6664: Discuss Interim Regulations Related to Compliance with Objective Design Review Standards in HB 1293 (2023) and the Impacts to MICC Title 19 | <input checked="" type="checkbox"/> Discussion Only<br><input type="checkbox"/> Action Needed:<br><input type="checkbox"/> Motion<br><input type="checkbox"/> Ordinance<br><input type="checkbox"/> Resolution |
| <b>RECOMMENDED ACTION:</b> | Receive report. No action necessary.   |  |

|                               |  |
|-------------------------------|--|
| <b>DEPARTMENT:</b>            | Community Planning and Development   |
| <b>STAFF:</b>                 | Jeff Thomas, Community Planning and Development Director<br>Adam Zack, Principal Planner |
| <b>COUNCIL LIAISON:</b>       | n/a  |
| <b>EXHIBITS:</b>              | 1. Objective Design Standards and Title 19 MICC  |
| <b>CITY COUNCIL PRIORITY:</b> | n/a  |

|                               |        |
|-------------------------------|--------|
| <b>AMOUNT OF EXPENDITURE</b>  | \$ n/a |
| <b>AMOUNT BUDGETED</b>        | \$ n/a |
| <b>APPROPRIATION REQUIRED</b> | \$ n/a |

**EXECUTIVE SUMMARY**

The purpose of this agenda bill is to brief the City Council on the expected interim regulations and eventual development code amendments needed to comply with changes to state law enacted by House Bill 1293 (2023).

- In 2023, the WA State Legislature enacted House Bill (HB) 1293 which limits how cities and counties planning under the WA Growth Management Act (GMA) can regulate building design.
- HB 1293 established [RCW 36.70A.630 – Local design review—Requirements and restrictions](#), which requires:
  - Local design standards must be clear and objective (RCW 36.70A.630(2)), and
  - No design review process can require more than one public meeting (RCW 36.70A.630(4)).
- Mercer Island will need to amend multiple sections in Chapters 19.11, 19.12, and 19.15 of the Mercer Island City Code (MICC) to comply with these requirements.
- Cities and counties must comply with RCW 36.70A.630 within six months of the completion of the comprehensive plan periodic review. For Mercer Island, this compliance deadline is June 30, 2025.
- Staff is analyzing the development code to identify the amendments necessary for compliance and have identified three categories of issues that will need to be addressed by the amendments (in depth analysis is provided in Exhibit 1):
  - **Issue 1** – Compliance by June 30, 2025 Deadline

- **Issue 2** – Clear and Objective Standards
  - **Issue 2.A** – “Should” Standards
  - **Issue 2.B** – Flexible Standards
  - **Issue 2.C** – Combination of “Should” and Flexible Standards
- **Issue 3** – Changes to Design Review Process
- Following this briefing, staff will prepare interim regulations for the City Council to consider.

## BACKGROUND

In 2023, the WA Legislature enacted House Bill (HB) 1293. This bill added a new section to the Growth Management Act (GMA) that establishes new requirements and restrictions governing how cities and counties planning under the GMA can regulate building design. The City has established design standards and review procedures in Chapters 19.11, 19.12, and 19.15 Mercer Island City Code (MICC). The main requirement from HB 1293 is that (1) local design review standards must be clear and objective and (2) the standards may not reduce development intensity below the level generally allowed by the zoning designation (RCW 36.70A.630(2)). The City must update its design standards to comply with HB 1293 by June 30, 2025.

Nearly all the design standards in Chapters 19.11 and 19.12 MICC are expected to need some amendment to comply because many provisions are flexible without setting at least one measurable criterion. The majority of these flexible standards allow the Design Commission to determine design requirements on a case-by-case basis.

### House Bill 1293 and RCW 36.70A.630

In 2023, the WA Legislature enacted House Bill (HB) 1293. This bill added a new section to the Growth Management Act (GMA) that establishes new requirements and restrictions governing how cities and counties planning under the GMA can regulate building design. The new GMA section was codified as [RCW 36.70A.630 – Local Design Review – Requirements and Restrictions](#). The Mercer Island City Code (MICC) must be consistent with RCW 36.70A.630 by June 30, 2025 (RCW 36.70A.630(5)).

### Mercer Island Design Standards

In 1972, the City of Mercer Island adopted its first design standards, established a process for design review, and created the Design Commission (DC) to conduct some of the design review. That system of design standards and design review has been amended several times in the years since it was adopted but remains in effect.

Much of the new development that occurs throughout the City, in both Town Center and other zones, is subject to some level of design review, excluding single-family dwellings and their accessory buildings, property owned by the City, and wireless communication facilities. The DC conducts design review for more complex proposals, including new buildings, additions, or exterior alterations to a building or site beyond a certain threshold. All other proposals are subject to administrative design review conducted by the code official or designee. The City’s design standards and review procedures are codified in Chapters [19.11](#), [19.12](#), and [19.15](#) MICC.

### Two Phased Approach

The City will comply with RCW 36.70A.630 in two phases. Phase one is the adoption of interim regulations to make temporary amendments to comply with the bill in advance of the June 30, 2025 deadline. Staff is in the process of preparing this interim ordinance and will incorporate the City Council’s feedback. Phase two will be

the adoption of permanent code amendments to comply with the requirements. Phase two is expected to begin in early 2026 and include public outreach in the scope of work to gather input on the proposed amendments.

## **ISSUE/DISCUSSION**

Staff have completed an analysis of the City Code to identify the amendments necessary to comply with RCW 36.70A.630. As described above, these amendments are focused on the code chapters that pertain to design standards and design review, namely Chapters 19.11, 19.12 and 19.15 MICC. Staff analysis identified many code amendments that will be needed to comply with the new requirements. These amendments are sorted into three categories of issues for the City Council to consider.

Exhibit 1 includes more information about the Mercer Island design standards, a summary of the design review process, and analysis of the issues expected during the preparation of development code amendments to comply with RCW 36.70A.630. The Exhibit identifies the following three categories of issues for the City Council to consider:

**Issue 1** – Compliance by June 30, 2025 Deadline

**Issue 2** – Clear and Objective Standards

**Issue 2.A** – “Should” Standards

**Issue 2.B** – Flexible Standards

**Issue 2.C** – Combination of “Should” and Flexible Standards

**Issue 3** – Changes to Design Review Process

At the April 15 City Council meeting, staff will provide an overview of Exhibit 1, including a walkthrough of the examples of each category of issue as provided in Table 3 of the Exhibit. Staff will also provide an overview of the proposed approach for code amendments to address each issue category. Time will be available for City Council questions and discussion. City Council input will inform the drafting of interim development regulations to comply with RCW 36.70A.630.

## **NEXT STEPS**

Staff will prepare an interim ordinance with an initial draft of amendments to comply with RCW 36.70A.630 based on the Council input on the issues listed above. A public hearing and first reading of the interim ordinance is planned for June 3 and second reading is planned for June 17, with an effective date of June 30, 2025.

## **RECOMMENDED ACTION**

Receive report. No action necessary.

# Objective Design Standards and Title 19 MICC

## BACKGROUND

### MERCER ISLAND DESIGN STANDARDS

In 1972, the City of Mercer Island adopted its first design standards, established a process for design review, and created the Design Commission (DC) to review proposed building designs. That system of design standards and review has been amended several times in the years since it was adopted but remains in effect today. A lot of the new development that occurs throughout the City, in both Town Center and other zones, is subject to some level of design review. Less complex projects are subject to administrative design review conducted by staff, whereas the DC conducts design review for the most complicated proposals that involve variable standards or DC discretion. The City's design standards and review procedures are codified in Chapters [19.11](#), [19.12](#), and [19.15](#) of the Mercer Island City Code (MICC).

### DESIGN STANDARDS AND THE GROWTH MANAGEMENT ACT

In 2023, the WA Legislature enacted House Bill (HB) 1293. This bill added a new section to the Growth Management Act (GMA) that establishes new requirements and restrictions governing how cities and counties planning under the GMA can regulate building design. The new GMA section was codified as [RCW 36.70A.630 – Local Design Review – Requirements and Restrictions](#), which states:

- (1) For purposes of this section, "design review" means a formally adopted local government process by which projects are reviewed for compliance with design standards for the type of use adopted through local ordinance.
- (2) Except as provided in subsection (3) of this section, counties and cities planning under RCW 36.70A.040 may apply in any design review process only clear and objective development regulations governing the exterior design of new development. For purposes of this section, a clear and objective development regulation:
  - (a) Must include one or more ascertainable guideline, standard, or criterion by which an applicant can determine whether a given building design is permissible under that development regulation; and
  - (b) May not result in a reduction in density, height, bulk, or scale below the generally applicable development regulations for a development proposal in the applicable zone.
- (3) The provisions of subsection (2) of this section do not apply to development regulations that apply only to designated landmarks or historic districts established under a local preservation ordinance.
- (4) Any design review process must be conducted concurrently, or otherwise logically integrated, with the consolidated review and decision process for project permits set forth in RCW 36.70B.120(3), and no design review process may include more than one public meeting.

- (5) A county or city must comply with the requirements of this section beginning six months after its next periodic comprehensive plan update required under RCW 36.70A.130.

The City of Mercer Island must ensure that its design standards are consistent with HB 1293 before the deadline June 30, 2025. An initial review of the design standards has indicated that a significant portion of the City's existing design standards will need to be amended to be consistent with RCW 36.70A.630.

#### **CHAPTER 19.11 MICC – TOWN CENTER DEVELOPMENT AND DESIGN STANDARDS**

All development in Town Center is subject to the development and design standards established in [Chapter 19.11 MICC](#). Chapter 19.11 MICC is made up of the following 15 sections:

|  |   |
|--|---|
| <a href="#">19.11.010 – General</a>                    | <a href="#">19.11.090 – Lighting</a>                                      |
| <a href="#">19.11.020 – Land Uses</a>                  | <a href="#">19.11.100 – Building Design</a>                               |
| <a href="#">19.11.030 – Bulk Regulations</a>           | <a href="#">19.11.110 – Materials and Color</a>                           |
| <a href="#">19.11.040 – Affordable Housing</a>         | <a href="#">19.11.120 – Street Standards</a>                              |
| <a href="#">19.11.050 – Green Building Standards</a>   | <a href="#">19.11.130 – Parking, Vehicular and Pedestrian Circulation</a> |
| <a href="#">19.11.060 – Site Design</a>                | <a href="#">19.11.140 – Signs</a>   |
| <a href="#">19.11.070 – Greenery and Outdoor Space</a> | <a href="#">19.11.150 – Administration</a>                                |
| <a href="#">19.11.080 – Screening</a>                  |   |

Chapter 19.11 MICC was overhauled during the last Town Center subarea plan update in 2016 ([Ordinance No. 16C-06](#)). This section was most recently amended in 2022, to refine the required ground floor uses established in MICC 19.11.020 ([Ordinance No. 22C-09](#)).

The design standards in Chapter 19.11 MICC implement the design vision for the Town Center. The design vision established in MICC 19.11.010(D) states:

- D. *Design vision.*
1. *Development and design standards.* The development and design standards that follow are intended to enhance the Town Center for pedestrians and develop a sense of place. To accomplish this vision, new or redevelopment is encouraged to orient buildings toward the public right-of-way with buildings brought forward to the sidewalk or landscaped edge; parking placed behind buildings and in less visible areas or underground; design structures with varied mass and scale, modulation of heights and wall planes; and pedestrian through-block connections that will break up very large or long blocks for improved pedestrian circulation from one side of the block through to the other side.
  2. *Function.* The design of buildings, structures and streetscapes within the Town Center is intended to support a built environment that is convenient and accessible to pedestrians, motorists, bicyclists and public transit users. Development should enhance the Town Center as a vibrant, healthy, mixed use downtown that serves as the city's retail, business, social, cultural and entertainment center and ensures the commercial and economic vitality of

the area. New or redevelopment should increase the attractions and pedestrian amenities that bring residents to the Town Center, including local shopping, services, offices, specialty retail, restaurants, residences, festivals, special events, and entertainment. Outdoor spaces should function as social settings for a variety of experiences, adding to the comfort of life in Mercer Island, while maintaining a human scale and an ability for easy pedestrian circulation.

3. *Site features.* New or redevelopment should include public amenities, such as storefronts with canopies, street trees, greenery, seating, fountains or water features, outdoor cafes, sculpture or other forms of art, and places for gathering and lingering. The use of materials, color, texture, form and massing, proportion, public amenities, mitigation of environmental impacts, landscaping and vegetation, and architectural detail should be incorporated in the design of new or redevelopment with the purpose of supporting a human scale, pedestrian-oriented Town Center. New or redevelopment shall be coordinated and consistent with the downtown street standards.
4. *Pedestrian orientation.* Pedestrian-oriented and customer intensive retail businesses and offices are encouraged to locate on the street level to promote active use of sidewalks by pedestrians, thus increasing the activity level and economic viability of the Town Center. New or redevelopment should also enhance and support a range of transportation choices and be designed to maximize opportunities for alternative modes of transportation and maintain individual mobility. Even with a healthy variety of development in the Town Center, each individual development or redevelopment project shall favor the pedestrian over the automobile in terms of site design, building placement and parking locations.

#### **CHAPTER 19.12 MICC – DESIGN STANDARDS FOR ZONES OUTSIDE TOWN CENTER**

Design standards for all zones outside of Town Center are established in [Chapter 19.12 MICC](#). Outside Town Center, “regulated improvements” are subject to design standards and design review (MICC 19.12.010(A)). The term “regulated improvements” is defined in MICC 19.16.010 as:

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

Note that the definition of regulated improvements dates to the establishment of design standards by Ordinance No. 297 from 1972. The only change to this definition in the intervening years was the addition of wireless communications facilities made in the last fifteen years by [Ordinance No. 11C-05](#).

Chapter 19.12 MICC as it currently exists was established in 2004 by [Ordinance No. 04C-08](#). This chapter is made up of the following eight sections:

|   |   |
|---|---|
| <a href="#">19.12.010 – General</a>                             | <a href="#">19.12.050 – Vehicular and Pedestrian Circulation</a>      |
| <a href="#">19.12.020 – Site Features and Context</a>           | <a href="#">19.12.060 – Screening of Service and Mechanical Areas</a> |
| <a href="#">19.12.030 – Building Design and Visual Interest</a> | <a href="#">19.12.070 – Lighting</a>                                  |
| <a href="#">19.12.040 – Landscape Design and Outdoor Spaces</a> | <a href="#">19.12.080 – Signs</a>                                     |

The design standards in Chapter 19.12 MICC implement the design vision for zones outside of the Town Center. The design vision established in MICC 19.12.010(B) states:

B. *Design vision.*

1. *Site and context.* Non-Town Center areas are largely characterized by residential settings that are heavily vegetated, topographically diverse and enhanced with short and long-range views that are often territorial in nature. The design of new and remodeled structures should respond to this strong environmental context. Site design should maintain the natural character of the island and preserve vegetation concentrations, topography and the view opportunities that make Mercer Island special.
2. *Building design.* Development of new and remodeled structures should conserve Mercer Island's special environmental characteristics, such as steep slopes, watercourses, and large concentrations of mature trees. Buildings shall be designed to be architecturally compatible with other structures in the neighborhood with respect to human scale, form and massing, and relationship to natural site features. High quality and durable materials, complementary colors, texture, and architectural detail should be incorporated into the design. Use of materials such as natural wood and stone, and design elements such as large building overhangs and window exposure to natural light, are encouraged.
3. *Landscaping and amenities.* Landscaping should reflect the natural wooded character of Mercer Island and provide visual separation between different land uses. Amenities such as street trees, plantings, and other landscape design elements, including fountains or water features, and art features should be integrated into new and remodeled structures and their sites.

**DESIGN REVIEW PROCESS SUMMARY**

The process for conducting design review is established in Chapter 19.15 MICC. Under the existing process, design review fits into one of two categories: (1) DC design review, and (2) Code Official design review. DC design review requires review of proposals during two public meetings: a study session prior to submittal of an application and a public hearing before the DC prior to making their decision. Code Official design review is an administrative process conducted by City staff. Both design review processes are discussed further below.

The following regulated improvements outside Town Center and developments in Town Center require DC design review:

- (a) New buildings;
- (b) Any additions of gross floor area to an existing building(s);
- (c) Any alterations to an existing building that will result in a change of 50 percent, or more, of the exterior surface area;
- (d) Any alterations to a site, where the alteration will result in a change to the site design that affects more than 50 percent of the development proposal site; and
- (e) Any alterations to existing facades, where the building is identified by the city as a historic structure; (MICC 19.15.220(C)(1)(c)(i)).

All other development proposals that require design review and do not require DC review under subsection [MICC 19.15.220\(C\)\(1\)\(c\)\(i\)](#) are reviewed by the code official. The code official can determine that an application normally reviewed administratively be, instead, subject to DC review and approval. A decision by the code official to reassign review to the DC must be based on factors such as the scope, location, context, and visibility of the proposed change or modification.

The following activities are exempt from design review by either the DC or code official:

- (a) Any activity which does not require a building permit; or
- (b) Interior work that does not alter the exterior of the structure; or
- (c) Normal building and site maintenance including repair and replacement that involves no material expansion or material change in design. For example, replacement in kind of roof mounted heating and cooling equipment or ventilation equipment does not require design review. (MICC 19.15.220(C)(1)(c)(iii))

#### Design Review Process

Land use review types established in [MICC 19.15.030](#) determine the process required for each type. There are two design review land use review types established in [MICC 19.15.030, Table A](#):

- Code official design review is a Type II land use review
- DC design review is a Type IV land use review

The review processes for land use review types II and IV are established in [MICC 19.15.030, Table B](#), summarized in Table 1.

**Table 1. Summary of MICC 19.15.030, Table B.**

| Process                                     | Type II  | Type IV  |
|---|--|--|
| Pre-Decision Notice                         | CPD Bulletin<br>No Notice of Application   | Notice of Application<br>Public Hearing Notice                 |
| Preapplication meeting required             | No   | Yes  |
| Determination of Completeness <sup>3</sup>  | No <sup>4</sup>  | Yes  |
| Public Notification                         | Yes  | No   |
| Notice of Application (mailing and posting) | No   | Yes  |
| Public Comment Period                       | None   | 30 days  |
| Public Hearing                              | No <sup>5</sup>  | Yes  |
| Decision Making Body                        | Code Official  | Hearing Examiner <sup>2</sup> or DC                            |
| Notice of Decision                          | No <sup>5</sup>  | Yes  |
| Appeal Authority                            | Hearing Examiner, DC for code official design review, and Superior Court for final plats | Superior Court or Shoreline Hearings Board (shoreline permits) |

Notes:

- 1 Appeals of final short plat approvals shall be to superior court. Appeals of shoreline exemptions shall be to the shoreline hearings board.
- 2 The hearing examiner will provide a recommendation to ecology for decisions on shoreline conditional use permits and shoreline variances.
- 3 Determinations of completeness are subject to the standards in MICC 19.15.070.
- 4 Most, but not all, Type II land use reviews do not require a determination of completeness.
- 5 Final plats are the only Type II land use reviews to require a public hearing and notice of decision per MICC 19.15.030.

Note: If a development requires both design review and other authorizations (i.e., a building or shoreline permit) both processes are required. For example, for a development that requires both code official design review (Type II) and a shoreline conditional use permit (Type IV) the entire review would be consolidated in the shoreline conditional use permit process.

The design review process and procedure is established in [MICC 19.15.220 – Design Review and the Design Commission](#). The DC design review process can be broken down into the following four steps.

**Step 1 - Preapplication Meeting**

A preapplication meeting is required for all Type IV land use reviews, including DC review (MICC 19.15.030). The applicant and City staff participate in the preapplication meeting. This meeting provides an opportunity to discuss the proposal in concept terms, identify the applicable city requirements and the project review process. If a preapplication meeting is required for a project, it must occur no more than one year prior to application submittal.

**Step 2 - DC Study Session**

[MICC 19.15.220\(C\)\(2\)\(a\)](#) requires a DC study session prior to application for development that would be subject to DC review. During the study session, the DC may provide feedback to be considered in the design of the project. The study session takes place at a public meeting prior to the DC public hearing and

decision. This means that proposals subject to DC review currently require two public meetings prior to a decision.

Step 3 - Public Hearing

Development proposals that require DC review include a public hearing (MICC 19.15.030). The DC is granted the authority to modify many of the design requirements under the existing design standards and the public hearing is an opportunity for the community to provide input on a proposal prior to authorization. The public hearing is important to the process for more complex projects because many of the current design standards are flexible.

Step 4 – DC Decision

Following the public hearing, the DC issues a written decision for the proposal. The DC decision can include conditions of approval that must be met to ensure the development will be consistent with the relevant design standards.

**CATEGORIES OF ISSUES**

Staff has identified three categories of issues for the City Council to consider. The staff-identified categories of issues are listed in Table 2.

**Table 2. Design Standard Categories of Issues.**

| Issue Category # | Issue Title                                    | Description   |
|------------------|--|---|
| 1                | Compliance by June 30, 2025                    | The City must amend its design standards to comply with RCW 36.70A.630 by June 30, 2025.  |
| 2                | Clear and Objective standards                  | The design standards must be clear and objective in order to comply with RCW 36.70A.630. Issue 2 is refined into three categories 2.A, 2.B, and 2.C                                     |
| 2.A              | “Should” Standards                             | Uses of the term “should” will need to be clarified to ensure the standard is clear and objective   |
| 2.B              | Flexible Standards                             | Standards allow wide variation that must be more specific to make them clear and objective  |
| 2.C              | Combination of “Should” and Flexible Standards | Some standards combine “should” and flexible standards and both terms will need to be clarified to make them clear and objective  |
| 3                | Design Review Process                          | RCW 36.70A.630(4) requires “[ ... ] no design review process may include more than one public meeting.” Code provisions defining the design review process must be amended accordingly. |

**ISSUE 1 – COMPLIANCE BY JUNE 30, 2025, DEADLINE**

On or before June 30, 2025, The City will need to amend many sections of Chapters 19.11 and 19.12 MICC as well as some of the provisions in Chapter 19.15 MICC to comply with RCW 36.70A.630. Based on initial study, Staff have identified as many as 30 sections of Title 19 MICC that must be amended for compliance with RCW 36.70A.630. The compliance deadline will be met first with an interim ordinance. This will allow the City to develop permanent amendments to comply according to its own scope and schedule.

## ISSUE 2 – CLEAR AND OBJECTIVE STANDARDS

RCW 36.70A.630(2) requires all design standards to be clear and objective. That standard is split into two requirements:

1. There must be at least one ascertainable guideline, standard, or criterion by which and applicant can determine if a proposal will meet the requirements, and
2. The design standards may not result in a reduction of development intensity below what is generally allowed in the zone.

Many of the design standards throughout Chapters 19.11 and 19.12 MICC do not meet the “clear and objective” threshold set in RCW 36.70A.630(2). In general, the problem for many of the existing standards is that they do not have at least one ascertainable standard or guideline.

The standards that are not clear and objective generally fall into three categories:

- A. “Should” standards;
- B. Flexible standards; and
- C. Combination of shall/should and flexible standards

### Issue 2.A – “Should” Standards

Throughout Chapters 19.11 and 19.12 MICC, there are many design standards that include the term ‘should’ to indicate a variable standard. Interpretation of the term “should” is explained in MICC 19.11.150(A)(3), which states:

When a standard uses the word "shall," the standard is mandatory. When a standard uses the word "should," the standard is mandatory unless the applicant can demonstrate, to the satisfaction of the design commission, an equal or better means of satisfying the standard and objective. (note: a similar provision for the standards outside of the Town Center is established in MICC 19.12.010(E)).

Some of the design standards that use the term ‘should’ are currently clear and objective because there is an ascertainable standard. An example of a design standard with the term ‘should’ that is also clear and objective is MICC 19.11.080(B)(1):

*On-site service areas.* All on-site service areas, loading zones, outdoor storage areas, garbage collection and recycling areas and similar activities **should** be located in an area not visible from public streets. [ ... ] [emphasis added]

This standard is clear and objective as defined in RCW 36.70A.630(2) because the applicant can demonstrate that the on-site service area is not visible from the public street. The required aspect is measurable. In these instances, simply replacing the term ‘should’ with ‘must’ or ‘shall’ will make the standard clear and objective.

On the other hand, some design standards that use the term ‘should’ do not include a clear and objective criterion by which an applicant can determine if a proposal meets the requirement. For example, MICC 19.12.030(B)(1)(a) states:

*Scale.* Building scale should be proportional to other adjacent buildings, the street edge and, as to commercial, regulated residential and regulated public facilities, to the pedestrian environment. [emphasis added]

This standard is not clear and objective as defined in RCW 36.70A.630(2) because the code does not set any measurable standards for what would qualify as being either in or out of proportion to adjacent buildings, the street edge, and the pedestrian environment. Without a measurable criterion, an applicant would be unable to determine whether a proposed development would meet the requirements. Amendments to these types of standards are necessary to comply with RCW 36.70A.630(2).

#### Issue 2.B – Flexible Standards

Many of the design standards throughout Chapters 19.11 and 19.12 MICC include flexible standards that do not clarify how the standard might be satisfied. [MICC 19.11.060\(B\) – Site Design](#) is an example of a flexible standard that is not clear and objective. This section requires that new development in the Town Center include major site features such as through-block connections, and/or public open space. MICC 19.11.060(B) states:

- B. *Major site features.* Any major new construction in the TC-5, TC-4, TC-4 Plus or TC-3 subarea which exceeds the two-story base height and that includes or abuts a preferred through-block connection location shown on Figure 7 shall include a through-block connection subject to design commission determination that such connection is feasible and achievable. Any major new construction exceeding three stories in height in the TC-5, TC-4 or TC-4 Plus subarea shall include at least one of the following major site features, subject to design commission determination that such choices contribute to a well-balanced mix of features in that subarea: [emphasis added]
1. *Through-block connection.* Through-block pedestrian connections will qualify as a major site feature upon satisfaction of the development and design standards set forth in subsection E of this section. If the on-site area of the through-block connection does not equal or exceed three percent of the gross floor area of the development, then public open space shall also be provided so that the total area of the through-block connection and public open space equals or exceeds three percent of the gross floor area of the development.
  2. *Public open space.* Public open spaces will qualify as a major site feature upon satisfaction of the development and design standards set forth in subsection D of this section.

The problem with this standard is that satisfying the requirement is subject to a DC determination of whether the through-block connection is “feasible and achievable” and a DC determination that other major site features “contribute to a well-balanced mix of features in that subarea.” The design standards do not provide criteria for determining whether a proposal is “feasible and achievable” or if a major site feature contributes to “a well-balanced mix of features in that subarea.” Instead, the code imbues the DC with subjective latitude to determine whether the project is permissible. For this reason, this standard and others like it will need to be amended to be clear and objective.

### Issue 2.C – Combination of “Should” and Flexible Standards

Many design standards throughout Chapters 19.11 and 19.12 MICC combine both “should” and flexible standards. This combination makes it difficult to determine what is specifically required. MICC 19.12.030(B)(1) is an example of the combination of “should” and flexible standards within the same subsection. Standards similar to this example can be found throughout Chapters 19.11 and 19.12 MICC. MICC 19.12.030(B)(1) states:

B. *Standards.*

1. *Scale, form and mass.* Scale, form, massing, building proportions, spacing of windows and doorways, roof silhouette, facade orientations, and style of architecture shall have a unified character and, as to commercial, regulated residential and regulated public facilities, recognize pedestrian needs.

a. *Scale.* Building scale should be proportional to other adjacent buildings, the street edge and, as to commercial, regulated residential and regulated public facilities, to the pedestrian environment.

b. *Form and mass.* Building forms should not present visual mass or bulk impacts that are out of proportion to adjacent structures, or that appear from the public way or surrounding properties as having unmodulated visual bulk. [emphasis added]

From this example, the following terms or concepts present vague or undefined standards that are neither clear nor objective:

- “shall have a unified character” and “recognize pedestrian needs”: This language does not establish a least one ascertainable guideline, standard, or criterion for either the unified character or pedestrian needs requirement. This standard does not meet the requirements of RCW 36.70A.630.
- “Building forms should not present visual mass or bulk impacts that out of proportion to adjacent structures, or that appear from the public way or surrounding properties as having unmodulated visual bulk.” This standard presents two problems:
  - Use of the term ‘should’ allows the DC discretion to vary this standard on a case-by-case basis, and
  - The code does not set any measurable standards for what would qualify as being either in or out of proportion to adjacent structures or what would constitute appearing unmodulated visual bulk.

### Addressing Issue 2 – “Should” Standards, Flexible Standards, and Combination Standards

The following approaches and challenges are anticipated when preparing a draft of amendments to address Issue 2.

**Approach:** Define terms to make standards clear and objective.

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**Challenge:** Some terms are difficult to define and many variable terms were left open-ended to allow for interpretation, but now that open-endedness does not meet the requirement for clear and objective standards.

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**Explanation:** Defining the standards to remove flexibility will be challenging because many undefined or flexible terms in the development code have a wide range of how they could be defined. To return to one of the examples provided above, there are many different ways MICC 19.12.030(B)(1)(a) could be clarified to define what it means for new development to be “proportional to other adjacent buildings.” That variability was likely intentional when the standard was adopted so that the DC could interpret what this means on a case-by-case basis. RCW 36.70A.630 now prohibits this approach. Defining this type of standard requires a judgement call during the drafting of amendments to determine how the undefined term can be measured or otherwise clarified.

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**Approach:** Remove the flexibility but keep the standards.

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**Challenge:** Unintended consequences.

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**Explanation:** A potential drawback to removing flexibility from the design standards is that it could lead to unintended consequences under the new standards. Many of the existing flexible standards leave room for interpretation so that regulated aspects of design can be considered within the context of the overall development without setting a firm standard that would require a development to include a design feature that does not make sense in context. Given the quantity of flexible standards in Chapters 19.11 and 19.12 MICC, care must be taken when removing flexibility from the design standards to avoid unintended consequences.

An example of the challenge of unintended consequences can be found in MICC 19.11.060(B), which allows the DC discretion to determine if a through-block connection is feasible and achievable. Without providing flexibility in this standard, some new developments could be required to provide a through-block connection despite that connection being neither feasible or achievable. Making the standard simply require a through-block connection no matter what could potentially lead to an unintended consequence: through-block connections being required for a site where the future connection is impossible.

**Approach:** Strike the standard entirely.

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**Challenge:** Removal of some requirements for the provision of amenities and design features.

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**Explanation:** Striking the flexible standards would remove the ambiguity from the design standards, but could result in development occurring without providing some of the design features and amenities currently required. Returning to the example of MICC 19.11.060(B), this would strike the major site feature requirements entirely and eliminate the flexible standard. On one hand, this option would result in clear and measurable standards, but on the other hand, development could occur without providing a through-block connection or comparable amenities.

### ISSUE 3 – DESIGN REVIEW PROCESS

The development code details a design review process that is required in addition to other land use reviews. The DC review process currently requires DC review at two public meetings: (1) a DC study

session, and (2) a pre-decision DC public hearing (MICC 19.15.220(C)(2)(a)). [RCW 36.70A.630\(4\)](#) requires that no local design review process may include more than one public meeting. The City must amend the design review process to only require one public meeting as part of its design review process (RCW 36.70A.630(4)). Proposed amendments to comply with RCW 36.70A.630 will include changes to Chapter 19.15 MICC to alter the design review process to require only one public meeting.

### **ILLUSTRATING THE ISSUES**

Table 3 provides examples of issues 2.A, 2.B, 2.C, and 3 from the development code. Each example is accompanied by a staff explanation of the issue and why that example is provided. Following the staff explanation is a preliminary draft of an amendment to illustrate how the City might address the issue in that code section.

Table 3. Design Standards Examples.

| Existing Design Standard <sup>1</sup>  | Issue Statement  | Draft Amendment to Address Issue Statement <sup>2</sup>  |
|--|--|--|
| <p><b>MICC 19.11.150(3)</b></p> <p>3. <i>Shall/should.</i> When a standard uses the word "shall," the standard is mandatory. When a standard uses the word "should," the standard is mandatory unless the applicant can demonstrate, to the satisfaction of the design commission, an equal or better means of satisfying the standard and objective.</p>  | <p><b>Issue 2.A</b></p> <p>This provision from the "Administration" section of Chapter 19.11, the Town Center design standards, grants the DC broad discretion to vary the requirements for any design standard that include the word "should". Because of the discretion allotted to the DC by this standard, any standard with "should" is likely to not meet the clear and objective standard required. If this standard were struck and the term "should" were replaced with "must" or a similar direct term, many standards would be clear and objective. This would present some challenges to avoid unintended consequences and adopting new definitions for previously undefined terms.</p>  | <p>3. <del><i>Shall/should.</i> When a standard uses the word "shall," the standard is mandatory. When a standard uses the word "should," the standard is mandatory unless the applicant can demonstrate, to the satisfaction of the design commission, an equal or better means of satisfying the standard and objective.</del></p>   |
| <p><b>MICC 19.11.070(B)(3)(c)</b></p> <p>c. A ratio of one tree for every six parking spaces should be provided throughout any surface parking lot. Of the total number of trees required, 50 percent shall be a minimum of 24-inch box in size, and 50 percent shall be a minimum of 15-gallon in size.</p>   | <p><b>Issue 2.A</b></p> <p>This standard sets a clear and objective standard for required tree planting in parking lots but it includes the term "should", which grants the DC the discretion to vary the requirement.</p>   | <p>c. A ratio of one tree for every six parking spaces <del>should</del> <u>must</u> be provided throughout any surface parking lot. Of the total number of trees required, 50 percent shall be a minimum of 24-inch box in size, and 50 percent shall be a minimum of 15-gallon in size.</p>  |
| <p><b>MICC 19.11.030(A)(2)</b></p> <p>2. <i>Base building height.</i> A base building height of up to two stories (not to exceed 27 feet) shall be allowed. One-story structures located adjacent to the public right-of-way in the TC-7, TC-5, TC-5 Plus and TC-3 subareas shall be a minimum of 15 feet and may be as tall as 27 feet with approval of the design commission to ensure the taller facade provides features that ensure a pedestrian scale.</p> | <p><b>Issue 2.B</b></p> <p>The highlighted text grants the DC discretion to determine if a taller facade "provides features that ensure pedestrian scale" but the development code does not establish any standards with at least one ascertainable requirement for what constitutes a feature that ensures pedestrian scale. To comply with RCW 36.70A.630, the development code must either establish at least one clear and objective criterion by which the DC would make this determination, or remove the requirement that a taller facade height provide features that ensure a pedestrian scale. The draft amendment in the next column would address this issue by removing the requirement entirely.</p>   | <p>2. <del><i>Base building height.</i> A base building height of up to two stories (not to exceed 27 feet) shall be allowed. One-story structures located adjacent to the public right-of-way in the TC-7, TC-5, TC-5 Plus and TC-3 subareas shall be a minimum of 15 feet and may be as tall as 27 feet with approval of the design commission to ensure the taller facade provides features that ensure a pedestrian scale.</del></p>   |
| <p><b>MICC 19.11.140(B)(5)</b></p> <p>2. <i>Parking lot signs.</i> Signs within parking lots should be limited to those necessary for safety, identification and direction. The code official shall specify required wording for signage identifying public parking required by MICC 19.11.130(B)(2).</p>  | <p><b>Issue 2.B</b></p> <p>This standard grants the code official the authority to specify the wording on required parking lot signs and points back to MICC 19.11.130(B)(2) for the required wording. MICC 19.11.130(B)(2) does not include specific wording for parking lot signs, it only requires that "Signs indicating the location of parking available to the public shall be installed as approved by the design commission and city engineer. Such signs shall be installed at the entrance to the parking lot/garage along the street and within the parking lot/garage and shall comply with parking signage standards for the Town Center approved by the design commission and city engineer." This standard can be clarified by (1) clearly stating what is required of parking lot signs, (2) removing the code official's subjective latitude to specify required wording for parking lot signs, and (3) dropping the cross-reference to MICC 19.11.130(B)(2) in favor of one standard.</p> | <p>2. <del><i>Parking lot signs.</i> Signs within parking lots should be limited to those necessary for safety, identification and direction. The code official shall specify required wording for signage identifying public parking required by MICC 19.11.130(B)(2).</del> <u>Parking lot signs must:</u></p> <ul style="list-style-type: none"> <li>a. <u>Be installed along the street at the entrance to the parking lot or garage and within the parking lot or garage;</u></li> <li>b. <u>Indicate the location of public parking; and</u></li> <li>c. <u>Comply with all sign standards established in the subject zone.</u></li> </ul> |

| Existing Design Standard <sup>1</sup>  | Issue Statement   | Draft Amendment to Address Issue Statement <sup>2</sup>   |
|--|---|---|
| <p><b>MICC 19.12.030(B)(2)(a)</b></p> <p>a. <i>Facade modulation.</i> Building facade modulation shall break up the overall bulk and mass of the exterior of buildings and structures. <b>Such modulation should always be addressed on the horizontal plane and the vertical plane. Large or massive buildings should integrate features along their facades that are visible from the public right-of-way, pedestrian routes and nearby structures to reduce the apparent building mass and achieve an architectural scale consonant with other nearby structures.</b></p>   | <p><b>Issue 2.C</b></p> <p>The code establishes guidelines for building modulation in subsequent subsections of MICC 19.12.030(B)(2) so the first requirement that modulation shall break up the overall bulk and mass of the exterior of buildings and structures meets the clear and objective standard. The next requirement set in this standard is not clear and objective because it uses the term “should”, allowing the DC discretion to vary the requirement. The final sentence requires design elements but does not include at least one ascertainable standard. The code does not define how an applicant could meet the requirement to “reduce the apparent building mass and achieve an architectural scale consonant with other nearby structures.”</p>   | <p>c. <i>Facade modulation.</i> Building facade modulation shall break up the overall bulk and mass of the exterior of buildings and structures. Such modulation <del>should</del> <b>must</b> always be addressed on the horizontal plane and the vertical plane. <del>Large or massive buildings should integrate features along their facades that are visible from the public right-of-way, pedestrian routes and nearby structures to reduce the apparent building mass and achieve an architectural scale consonant with other nearby structures.</del></p>   |
| <p><b>MICC 19.11.080(B)(1)</b></p> <p>1. <i>On-site service areas.</i> All on-site service areas, loading zones, outdoor storage areas, garbage collection and recycling areas and similar activities <b>should be located in an area not visible from public streets. Consideration should be given to developing common service courts at the interior of blocks. Service areas should accommodate loading, trash bins, recycling facilities, food scrap composting areas, storage areas, utility cabinets, utility meters, transformers, etc. Service areas should</b> be located and designed for easy access by service vehicles and for convenient access by each tenant. Any emissions of noise, vapor, heat or fumes should be mitigated. Loading activities should generally be concentrated and located where they will not create a nuisance for adjacent uses.</p> | <p><b>Issue 2.C</b></p> <p>This standard has a combination of flexible and “should” standards. The net effect of this combination is that the standard is not clear and objective. The term “should” in the first sentence grants the DC discretion to vary the requirement. The code does not define a standard for giving consideration to service courts at the interior of blocks. Taken together, the flexible standard and “should” term in this standard will need to be amended to make the standard clear and objective. The draft amendment provided would (1) change should to must and (2) strike the undefined term “consideration should be given to developing common service courts at the interior of blocks.”</p>   | <p>1. <i>On-site service areas.</i> All on-site service areas, loading zones, outdoor storage areas, garbage collection and recycling areas and similar activities <del>should</del> <b>must</b> be located in an area not visible from public streets. <del>Consideration should be given to developing common service courts at the interior of blocks. Service areas should accommodate all services needed by uses established in the development including loading, trash bins, recycling facilities, food scrap composting areas, storage areas, utility cabinets, utility meters, and transformers, etc. Service areas should</del> <b>must</b> be located and designed for easy access by service vehicles and for convenient access by each tenant. Any emissions of noise, vapor, heat or fumes <del>should</del> <b>must</b> be mitigated. <del>Loading activities should generally be concentrated and located where they will not create a nuisance for adjacent uses.</del></p> |
| <p><b>MICC 19.15.220(C)(2)(a)</b></p> <p>a. <i>Study session.</i> In addition to the preapplication meeting, an applicant for a project that will require design review and approval by the design commission shall meet with the design commission in a study session to discuss project concepts before the plans are fully developed. At this session, which will be open to the public, the applicant should provide information regarding its site, the intended mix of uses, and how it will fit into the focus area objectives. The design commission may provide feedback to be considered in the design of the project.</p>   | <p><b>Issue 3</b></p> <p><a href="#">RCW 36.70A.630(4)</a> requires that no local design review process may include more than one public meeting. The design review process established in MICC 19.15.220 requires two public meetings: (1) a DC study session, and (2) a pre-decision public hearing before the DC. One of these public meetings will need to be removed from the design review process. Removing the study session requirement in MICC 19.15.220 would reduce the number of required meetings to one.</p> <p>Much of the information that can be provided to an applicant during the study session can also be provided at the required preapplication meeting, but the pre-decision public hearing is more central to the DC decision-making process because it gives the DC the opportunity to hear from the public regarding proposed development.</p> | <p>a. <del>Study session.</del> In addition to the preapplication meeting, an applicant for a project that will require design review and approval by the design commission shall meet with the design commission in a study session to discuss project concepts before the plans are fully developed. At this session, which will be open to the public, the applicant should provide information regarding its site, the intended mix of uses, and how it will fit into the focus area objectives. The design commission may provide feedback to be considered in the design of the project.</p>  |

Notes:

1. Highlighting emphasis added.
2. Draft amendments are provided as examples, code language proposed in the interim ordinance may vary.