



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

**AB 6341
October 3, 2023
Regular Business**

AGENDA BILL INFORMATION

TITLE:	AB 6341: Shoreline Master Program Amendments (Ordinance No. 23C-15 Second Reading)	<input type="checkbox"/> Discussion Only <input checked="" type="checkbox"/> Action Needed: <input type="checkbox"/> Motion <input checked="" type="checkbox"/> Ordinance <input type="checkbox"/> Resolution
RECOMMENDED ACTION:	Second reading and adoption of Ordinance No. 23C-15.	

DEPARTMENT:	Community Planning and Development
STAFF:	Jeff Thomas, Community Planning and Development Director Alison Van Gorp, Community Planning and Development Deputy Director Molly McGuire, Planner
COUNCIL LIAISON:	n/a
EXHIBITS:	1. Ordinance No. 23C-15 2. Department of Ecology Letter dated August 3, 2023 3. Planning Commission Recommendation
CITY COUNCIL PRIORITY:	n/a

AMOUNT OF EXPENDITURE	\$ n/a
AMOUNT BUDGETED	\$ n/a
APPROPRIATION REQUIRED	\$ n/a

EXECUTIVE SUMMARY

The purpose of this agenda bill is to present Ordinance No. 23C-15 for a second reading. Ordinance No. 23C-15 (Exhibit 1) would amend the Shoreline Master Program (SMP) in Chapter 19.13 Mercer Island City Code (MICC) to add “marina” and associated development standards as a new use, add “marina” as a definition in Chapter 19.16 MICC, and amend MICC 19.13.010 to clarify the relationship between the Mercer Island Shoreline Master Program and state law.

- The Shoreline Management Act (SMA) requires cities and counties to adopt shoreline master programs to regulate shorelines of the state. Lake Washington is a shoreline of the state.
- The City has adopted an SMP element of the Comprehensive Plan and has implemented regulations in Chapter 19.13 MICC, consistent with Chapter 90.58 RCW.
- In 2022, the Mercer Island Beach Club (MIBC) submitted an annual docket request for amendment of the Mercer Island SMP to allow for the redevelopment of their existing marina.
- City Council directed the Planning Commission to consider amendments to the SMP proposed by the MIBC.

- Between February and June 2023, the Planning Commission reviewed and refined the proposed amendments with a unanimous recommendation being made on June 7, 2023 for the City Council to adopt the proposed amendments to the SMP and MICC.
- On July 7, 2023, the City submitted the proposed amendments to the Washington State Department of Ecology (Ecology) for their initial review.
- On August 3, 2023, Ecology provided a formal written statement of initial concurrence with the proposed amendments (Exhibit 2).
- On September 19, 2023 the City Council held a first reading of the proposed amendments. Staff were directed to make four amendments following City Council discussion. Those changes are reflected in Exhibit 1c and 1d. The City Council also directed Staff to research implications of prohibiting “liveaboard vessels” in marinas and present a fifth amendment if necessary.

BACKGROUND

The Washington State Shoreline Management Act requires all cities and counties to adopt Shoreline Master Programs (SMP). An SMP establishes standards and requirements for development in the shorelines of the state, which includes the area 200 feet landward of the Ordinary High Water Mark (OHWM). The Washington State Department of Ecology (Ecology) evaluates and reviews all SMPs for consistency with the Shoreline Management Act by Ecology prior to adoption.

The Mercer Island SMP is established by [Element 7 of the Comprehensive Plan](#) and [Chapter 19.13 MICC](#). [MICC 19.13.040 - Table B Shoreland Uses Waterward of the Ordinary High Water Mark](#) specifies the uses that are allowed within each shoreline environment designation, and which permits are required for the use. The table currently includes a footnote that prohibits any use that is not listed in the table from being constructed on the shoreline. Given that footnote, a new or expanded marina would be prohibited. [MICC 19.13.050 – Shoreland development standards](#) establishes development standards for all development within the shoreline.

On September 29, 2022, the Mercer Island Beach Club (MIBC) submitted a code amendment request through the annual docket. They proposed amending the SMP to allow redevelopment and expansion of their existing boating facility, which is currently prohibited by the footnotes in MICC 19.13.040 – Table B. On December 6, 2022, the MIBC code amendment request was added to the final docket by [Resolution No. 1641](#).

The City is authorized to review and make amendments to its SMP it deems necessary by [WAC 173-26-090](#). [WAC 173-26-104](#), which authorizes local governments to use a joint review process with Ecology. This process combines local, and state public comment periods and hearings required by [RCW 90.58.090](#). The joint review process requires close coordination with the City and Ecology staff in conducting a joint public review of the proposed amendments. City and Ecology staff held several coordination meetings throughout the legislative process to ensure the proposal was consistent with state standards prior to Planning Commission review. Ecology staff was present at both joint public hearings to provide feedback and answer questions regarding state standards for shoreline uses and the joint review process. Ecology also provided public comment on the proposed amendments and recommended proposed alternatives to the Planning Commission.

The Planning Commission legislative review took place between February and June 2023. City staff coordinated with Ecology and the Planning Commission to develop amendments that would resolve the problem originally raised in the MIBC docket request, while remaining consistent with the requirements of the Shoreline Management Act. The Planning Commission review took place as follows:

- February 22, 2023 – Initial Planning Commission review of proposal and staff alternative
- March 22, 2023 – Joint public hearing with Planning Commission and the Washington State Department of Ecology (Ecology) regarding the proposal and alternative. Planning Commission asked staff to draft a new alternative to establish new regulations for marinas
- April 26, 2023 – Planning Commission review of staff drafted alternative
- June 7, 2023 – Joint public hearing with Planning Commission and Ecology regarding the proposed alternative. Following the public hearing, the Planning Commission unanimously recommended the adoption of the proposed amendments to the SMP and MICC.

During the March 22, 2023, joint public hearing with Ecology, the Planning Commission requested that staff draft an alternative to allow “marina” with a Shoreline Conditional Use Permit (SCUP). This alternative required amendments to [MICC 19.13.040 Table B](#) to allow the use, and drafting new development standards for marinas under [MICC 19.13.050 Shoreland Development Standards](#). The Planning Commission was briefed and provided input on the alternative on April 26, 2023. On June 7, 2023, the Planning Commission held a second joint public hearing with Ecology, during which the Planning Commission considered public comments and staff feedback. Following the public hearing, the Planning Commission unanimously recommended adoption of the proposed amendments to the SMP.

Following the Planning Commission recommendation to adopt the proposed amendments, the proposal was sent to Ecology for its initial review for consistency with state standards. A Determination of Consistency for the initial proposal was received on August 3, 2023.

The City Council held a first reading of the proposed amendments on September 19, 2023. During this meeting, the Council discussed four minor revisions to the Planning Commission’s recommended amendments. The revisions include clarifications for consistency of standards regarding length, uses, and definitions. Staff were directed to make the four changes, which are reflected in Exhibit 1c and 1d. The Council also had concerns surrounding language that prohibits “liveaboard vessels” in marinas, since it is likely that members may moor certain vessels that contain eating, sleeping, and sanitary facilities, and have the capability to be lived on. The Council directed staff to research the implications of prohibiting these types of vessels, and to present an additional, fifth amendment to the Planning Commission’s recommended amendments if necessary.

ISSUE/DISCUSSION

Ordinance No. 23C-15 would amend MICC 19.13.010(E), MICC 19.13.040 Table B, MICC 19.13.050, and MICC 19.16.010 as follows.

Section 1: Amends MICC 19.13.010

MICC 19.13.010 establishes the authority and purpose of the SMP. Subsection (E) establishes the relationship of the SMP and other federal and state laws. It does not allow for the SMP to relieve any responsibility to comply with other federal and state laws or permits. This section would be amended to provide clarity on processing various shoreline permits, a clarification that is necessary to allow for the City to implement the appropriate permit processing procedures found in WAC 173-27 for shoreline management permit and enforcement procedures.

Section 2: Amends MICC 19.13.040

MICC 19.13.040 Table B contains shoreland uses waterward of the ordinary high water make, the shoreline environment those uses are allowed or not permitted within, and the type of permitting process an applicant must go through to obtain a permit for a proposed use. During the March 22, 2023, Planning Commission public hearing, staff were directed to explore an alternative to the originally proposed amendment in which “marina” would be added as a shoreland use waterward of the OHWM. In the proposed Ordinance, marina has been added to Table B, allowed through the Shoreline Conditional Use Permit (SCUP) process in the Urban Residential Shoreline Environment Designation, and Not Permitted in the Urban Park Shoreline Environment Designation.

Section 3: Amends MICC 19.13.050

MICC 19.13.050 establishes shoreland development standards in which all development within the shoreline jurisdiction shall be in compliance with all development requirements specified in this chapter. Because “marina” was added as a new use in Table B, development standards consistent with state regulations for boating facilities and marinas were necessary to include in the City’s SMP. Ordinance No. 23C-15 includes proposed standards for marinas, including eligibility, location, size, and environmental requirements.

During the City Council’s first reading of the proposed amendments recommended by the Planning Commission, Staff were directed to make three revisions to the marina standards in MICC 19.13.050 new subsection (L) for clarifications of eligibility and consistency throughout the standards. The revisions are as follows:

1. MICC 19.13.050(L)(2)(b) – The marina ~~is owned or operated by an organization or corporation~~ servicing serves at least fifty (50) people; or
2. MICC 19.13.050(L)(4)(k) – Floating homes and live aboard vessels are prohibited in marinas.
3. MICC 19.13.050(L)(6)(b)(ii) – The code official may condition approval ~~to reduce the maximum of the~~ length to reduce the effects of overwater structures on navigability of the waterway.

The City Council also directed staff to conduct more research on the use of the term “live aboard vessels” in item number 2 in the list above, MICC 19.13.050(L)(4)(k). In drafting this standard, Staff used the guidelines for boating facilities in WAC 173-27-241(3)(c):

(v) Regulations to limit the impacts to shoreline resources from boaters living in their vessels (live-aboard).

Staff coordinated with the Department of Ecology to confirm that the intent of this guideline is not to limit the live-aboard vessels themselves, but to limit the impacts to shoreline resources from boaters living in their vessels at boating facilities or marinas that do not contain adequate facilities to support this use, such as pump-out stations and utilities. Since the proposed marina standards do not contain requirements for these facilities, Staff has proposed an additional amendment to this section to prohibit the use of live-aboard vessels at the marina. The revised standard is as follows:

Floating homes and ~~live-aboard vessels~~ living within vessels are prohibited in marinas.

Section 4: Amends MICC 19.16.010

MICC 19.16.010 contains definitions for terms used throughout the code. Since “marina” is a new use and has not been established throughout the code, a new definition was added to this section.

During the City Council’s first reading of the proposed amendments recommended by the Planning Commission, Staff were directed to make one revision to the definition of “Marina” in MICC 19.16.010 to further restrict the types of incidental services the marina can provide. The revision is as follows:

Marina: A private or public moorage facility providing the purchase, lease, and/or use of a slip for storing, berthing, and securing watercraft, including both long-term and transient moorage. Marinas may include accessory facilities for providing incidental services to users of the marina, such as swim structures, waste collection, ~~boat sales~~, or rental activities, and retail establishments providing fuel service, repair, or service of watercraft. Marinas do not include moorage facilities serving four or fewer single-family residences.

Section 6: Effective Date

Following the Planning Commission recommendation to adopt the proposed amendment and prior to the first City Council reading, Ecology provided an initial determination of consistency on August 3, 2023. After City Council reviews and adopts the proposed amendments, Ecology will conduct a second review and approval. Ordinance No. 23C-15 will not go into effect until approval from Ecology is received.

NEXT STEPS

Following City Council’s action, the proposed amendment will be sent to Ecology for final review and approval.

RECOMMENDED ACTION

Move to adopt Ordinance No. 23C-15 amending the Shoreline Master Program in the Mercer Island City Code to include marina as a new allowed use, adopting new regulations related to marina development standards, and to include a definition of marina.