



BUSINESS OF THE CITY COUNCIL CITY OF MERCER ISLAND

AB 5941
September 21, 2021
Regular Business

AGENDA BILL INFORMATION

TITLE:	AB 5941: State-Mandated Code Amendments	<input type="checkbox"/> Discussion Only
RECOMMENDED ACTION:	Hold public hearings on each ordinance and adopt Ordinance Nos. 21C-19, 21C-22, and 21C-23	<input checked="" type="checkbox"/> Action Needed: <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution

DEPARTMENT:	Community Planning and Development
STAFF:	Jeff Thomas, Director Alison Van Gorp, Deputy Director Eileen Kieffer, Legal Counsel
COUNCIL LIAISON:	n/a
EXHIBITS:	1. Ordinance No. 21C-19 Amending MICC 19.16.010, of the Development Code, to Comply with ESSB 5235 Relating to Unrelated Persons Cohabiting 2. Ordinance No. 21C-22 Amending MICC 19.16.010, of the Development Code, to Comply with ESHB 1023 Relating to Adult Family Home Capacity 3. Ordinance No. 21C-23 Amending MICC 19.16.010, of the Development Code, to Comply with E2SHB 1220 Relating to Transitional and Permanent Supportive Housing
CITY COUNCIL PRIORITY:	n/a

SUMMARY

During the 2020 and 2021 state legislative sessions, several housing and land use related bills passed, a few of which require City action ([ESSB 5235](#), [ESHB 1023](#) and [E2SHB 1220](#)). Based on the timelines imposed by this legislation, the City must act quickly to comply with the new requirements. A two-step approach is proposed to address the timing requirements: 1) adopt emergency interim regulations at the September 21 City Council meeting and, 2) adopt permanent regulations in approximately twelve months.

BACKGROUND

Staff consolidated the review of the code amendments related to ESSB 5235, ESHB 1023 and E2SHB 1220 because they all relate to housing issues and require amendments to the development code. ESSB 5235 and ESHB 1023 require cities to comply with provisions in the legislation related to the allowed occupancy of homes, dwelling units and adult family homes. While these legislative directives do not have an explicit deadline, amendments to the Mercer Island City Code are required to comply. Alternatively, E2SHB 1220 includes an explicit timeline that requires cities to be in compliance by September 30, 2021. To comply with this September 30 deadline, staff worked quickly to develop the interim ordinances now under consideration (see Exhibits 1, 2 and 3). More information on each piece of legislation and the required City code amendments are provided on page 2.

ESSB 5235: Housing Unit Inventory — Removing Limits on Unrelated Persons Cohabiting

[ESSB 5235](#) prohibits cities from regulating or limiting the number of unrelated people who may occupy a house or other dwelling unit. There are some exceptions: occupant limits on group housing regulated under state law or short-term rentals, any lawful limits on occupant load per square feet, and generally applicable health and safety provisions (i.e. fire code).

The bill requires a minor change to the City’s code. Staff is proposing an amended definition of family that simply means one or more persons living together in a “single housekeeping unit,” without any requirement that such persons be related. This is consistent with how other cities are amending their codes (for example, Bellevue is also taking this approach). Please also be advised that the City can still enforce other portions of its code relating to noise issues, fire code, etc. if concerns arise about the impacts of increased occupancy.

ESHB 1023: Increase to Capacity for Adult Family Homes

[ESHB 1023](#) provides that the Department of Social and Health Services, in certain circumstances, can approve an adult family home to provide services to up to eight adults (previously, the limit was six adults). Accordingly, staff propose code amendment to the definition of adult family homes allowing up to eight adults to be served.

E2SHB 1220: Emergency Shelters and Housing

[E2SHB 1220](#) is designed to encourage cities to accommodate transitional housing, emergency shelters, and permanent supportive housing. The bill contains new requirements for Comprehensive Plan housing element updates and creates new requirements for cities’ zoning/development regulations regarding indoor shelters and housing for the homeless. Namely, the bill forbids cities from prohibiting transitional or permanent supportive housing in residential zones or zones where hotels are allowed. The bill also forbids cities from prohibiting indoor emergency shelters and indoor emergency housing in any zones in which hotels are allowed (except for cities that authorize indoor emergency shelters/housing in a majority of zones within a one-mile proximity to transit). Finally, any regulations regarding occupancy, spacing, and intensity of use requirements regarding the four types of housing listed above must be reasonable and designed to protect public health and safety. Further, such restrictions cannot be used to prevent the siting of a “sufficient number necessary to meet” Mercer Island’s projected need for such housing and shelter.

What each city’s “projected need” for housing and shelter may be is an unresolved question—staff are anticipating numbers will be forthcoming from the Department of Commerce, likely in 2023. In the meantime, some jurisdictions are using the “Point in Time” count as a reasonable estimate or simply not imposing occupancy, spacing, or intensity of use requirements at all. The City’s development code does currently include some spacing restrictions; staff recommend retaining these restrictions for now and we will further evaluate them for compliance with E2SHB 1220 as we develop a permanent code amendment in 2022.

NEXT STEPS

Staff recommends that the City Council hold a public hearing on each proposed ordinance and adopt the proposed code amendments at the September 21 City Council meeting. Included as an attachment to each code amendment is a work plan outlining the process for developing permanent regulations on each of these issues. By adopting these work plans, state law allows for the interim ordinances to be in effect for 12 months (rather than the more common 6-month duration, [RCW 36.70.A.390](#)). This will provide adequate time for staff to perform additional analysis of each issue, including review of peer jurisdictions approaches

and further outreach to the Department of Commerce on compliant approaches. In the first half of 2022, staff will bring draft code amendments to the Planning Commission for review, and then to the City Council for final review and adoption, prior to the expiration of the 12-month interim ordinances.

RECOMMENDED ACTIONS

1. Conduct Public Hearings on Ordinance Nos. 21C-19, 21C-22, and 21C-23 and consider public testimony.
2. Adopt Ordinance No. 21C-19, amending Mercer Island City Code 19.16.010, Definitions, relating to the definitions of Family and Housekeeping Units.
3. Adopt Ordinance No. 21C-22, amending Mercer Island City Code 19.16.010, Definitions, relating to Adult Family Homes.
4. Adopt Ordinance No. 21C-23 amending Mercer Island City Code 19.16.010, Definitions, relating to Emergency Shelters and Housing, Transitional Housing, and Permanent Supportive Housing.