



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

**AB 6575
November 19, 2024
Public Hearing**

AGENDA BILL INFORMATION

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| TITLE: | AB 6575: Public Hearing: Interim Regulations Related to Permit Processing in Chapters 19.15 and 19.16 MICC (Ord. No. 24C-17). | <input type="checkbox"/> Discussion Only <input checked="" type="checkbox"/> Action Needed: <input checked="" type="checkbox"/> Motion <input checked="" type="checkbox"/> Ordinance <input type="checkbox"/> Resolution |
| RECOMMENDED ACTION: | Complete the public hearing, first reading, and schedule Ordinance No. 24C-17 for second reading. | |

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| DEPARTMENT: | Community Planning and Development |
| STAFF: | Jeff Thomas, Community Planning and Development Director Molly McGuire, Senior Planner |
| COUNCIL LIAISON: | n/a |
| EXHIBITS: | 1. Ordinance No. 24C-17 |
| CITY COUNCIL PRIORITY: | n/a |

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| 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. 24C-17 (Exhibit 1), which would establish interim regulations in Title 19 Mercer Island City Code (MICC) related to permit processing to comply with [Senate Bill 5290](#).

- [Senate Bill 5290](#) (SB 5290) amended [Chapter 36.70B RCW](#), which establishes the required processes for local project review, and required that cities and counties comply with all provisions of SB 5290 except Section 7, by July 23, 2023, the bill’s effective date.
- SB 5290 also included a new requirement for cities and counties to establish maximum permit review times, effective January 1, 2025.
- Interim regulations were adopted by [Ordinance No. 23C-10](#) at the July 18, 2023 City Council meeting and renewed for an additional 6 months at the July 2, 2024 meeting by [Ordinance No. 24C-12](#).
- The current interim regulations are set to expire on January 2, 2025.
- Ordinance No. 24C-17 would repeal Ordinance No. 24C-12 and replace these interim regulations with new interim regulations, including the same provisions of Ordinance No. 24C-12, plus additional provisions to comply with SB 5290 Section 7, which were not included in the original interim regulations due to the staggered effective date for Section 7.

- Adoption of Ordinance No. 24C-17 before the end of 2024 will avoid a lapse in regulations and will maintain compliance with Senate Bill 5290 as additional provisions of the legislation go into effect on January 1, 2025.

BACKGROUND

On July 18, 2023, the City enacted interim regulations under [Ordinance No. 23C-10](#) to ensure the MICC was consistent with Chapter 36.70B RCW as amended by SB 5290. On July 2, 2024, the City renewed the interim regulations for an additional six months under [Ordinance No. 24C-12](#) to allow the City additional time to review permanent amendments to comply with SB 5290, which will expire on January 2, 2025. The City must enact interim regulations that will repeal and replace the existing interim regulations to comply with the components of SB 5290 that go into effect on January 1, 2025, which were not included in the original regulations under Ordinance No. 23C-10. Ordinance No. 24C-17 (Exhibit 1) would enact those interim regulations for a period of one year.

Some amendments to the land use review processing standards in Chapter 19.15 MICC were required to comply with the recently enacted legislation, SB 5290, by July 23, 2023, except for Section 7, which becomes effective on January 1, 2025. More information on these requirements is provided below, and the necessary amendments are detailed in the Issue/Discussion section beginning on page 3. On July 18, 2023 the City adopted interim regulations ([Ordinance No. 23C-10](#)) to comply with these requirements of SB 5290. On July 2, 2024, the City renewed those interim regulations ([Ordinance No. 24C-12](#)), which will expire on January 2, 2025.

SB 5290

[Chapter 36.70B Revised Code of Washington](#) (RCW), Local Project Review, establishes the standards for processing land use permits for all cities and counties in Washington. In 2023, the WA State Legislature enacted SB 5290, which amended sections in Chapter 36.70B RCW. The bill's effective date was July 23, 2023. Cities needed to amend their land use review regulations to comply with SB 5290, except for Section 7, by July 23, 2023. Section 7 of SB 5290 becomes effective on January 1, 2025.

The sections of [SB 5290](#) that require code amendments to comply are summarized as follows.

- **Section 1.** Amends [RCW 36.70B.140](#) to stipulate that “interior alterations” are exempt from site plan review. Interior alterations are defined as construction activities that do not modify the existing site layout or its current use and involve no exterior work adding to the building footprint. Some minor amendments to [MICC 19.15.030](#) – Land use review types and [MICC 19.16.010](#) – Definitions were required by July 23, 2023, to comply with SB 5290. Compliance with this section was included in Ordinance No 23C-10 and Ordinance No. 24C-12. *Amendments to the MICC are necessary to comply with Section 1 of SB 5290. The required amendments were included in Ordinance No. 24C-17 and are **unchanged** from the existing interim regulations in Ordinance No. 24C-12.*
- **Section 5.** Amends [RCW 36.70B.020](#) – Definitions to change the definition of “project permit” and “project permit application” to remove building permits from the list of what constitutes a local government’s land use review under Chapter 36.70B RCW. This change influences what types of review are subject to the standards elsewhere in the chapter, including which reviews are subject to the updated determination of completeness standards in SB 5290 Section 6 and the maximum review time periods in SB 5290 Section 7. While building permits were removed from the original definition of “project permit”, guidance from Commerce advised applying a conservative interpretation to the types of permits that meet the definition of project permit until further clarification is provided by

legislature or the courts. After consultation with legal counsel and consideration of guidance from Commerce, Staff determined that building permits do meet the definition of project permit and are subject to the determination of completeness standards and maximum review time periods. Compliance with this section was included in Ordinance No. 23C-10 and Ordinance No. 24C-12. *Amendments to the MICC are necessary to comply with Section 5 of SB 5290. The required amendments are included in Ordinance No. 24C-17 and are **unchanged** from the existing interim regulations in Ordinance No. 24C-12.*

- **Section 6.** Amends [RCW 36.70B.070](#) – Project permit applications—Determination of completeness—Notice to applicant. The changes articulate what is required for determinations of completeness for project permit applications. Compliance with this section was included in Ordinance No 23C-10 and Ordinance No. 24C-12. *Amendments to the MICC are necessary to comply with Section 6 of SB 5290. The required amendments are included in Ordinance No. 24C-17 and are **unchanged** from the existing interim regulations in Ordinance No. 24C-12.*
- **Section 7.** Amends [RCW 36.70B.080](#) – Development regulations—Requirements—Report on implementation costs. This section establishes permit review timelines for project permit applications. This section also establishes penalties for reviews that exceed the maximum review timelines. Section 7 becomes effective on January 1, 2025 (see Section 13). Cities and counties must ensure that their development regulations comply with this section by the effective date. *Amendments to the MICC are necessary to comply with Section 7 of SB 5290. The required amendments are included in Ordinance No. 24C-17. These amendments are **new** and were not included in the existing interim regulations in Ordinance No. 24C-12.*
- **Section 8.** Amends [RCW 36.70B.160](#) – Additional project review encouraged—Construction. This section encourages cities and counties to adopt further measures to provide prompt and coordinated review of project permit applications. Cities are not required to adopt these additional measures in order to comply with SB 5290. *The additional measures encouraged in the amended RCW 36.70B.160 are options the City may consider as it works to adopt permanent regulations to comply with SB 5290.* No changes to MICC are currently proposed related to Section 8 of SB 5290. These topics may be undertaken when permanent regulations are considered.
- **Section 13.** Sets the effective date for Section 7 for January 1, 2025.

ISSUE/DISCUSSION

[Chapter 19.15 MICC](#) establishes the land use review processing standards in the City of Mercer Island. The standards in this chapter detail how a land use application must be reviewed for compliance with the Unified Land Development Code in [Title 19 MICC](#). This includes the requirements for submitting an application, the Code Official reviewing that application for completeness, and the applicable decision-making authority issuing a decision. The review procedures in Chapter 19.15 MICC ensure that each application is subject to consistent and predictable processes.

Staff completed an analysis of the MICC against the requirements of SB 5290 to determine which areas would need to be amended, and what those amendments would consist of. Staff categorized the requirements of SB 5290 into the following four subsections:

Project Permit Applications

[RCW 36.70B.020](#)(4) – Definitions defines what constitutes a project permit application or project permit as follows:

“Project permit” or “project permit application” means any land use or environmental permit or license required from a local government for a project action, including but not limited to subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by critical area ordinances, site-specific rezones which do not require a comprehensive plan amendment, but excluding the adoption or amendment of a comprehensive plan, subarea plan, or development regulations except as otherwise specifically included in this subsection.

The definitions of project permit and project permit application are important because they specify what local project reviews require determinations of completeness. They are also subject to the project review timelines as set in SB 5290. The definition of “project permit” or “project permit application” above is not an exhaustive list of the permits that require determinations of completeness and are subject to the project review timelines. Staff reviewed the existing list of permits found in the MICC and determined whether they met the definition above. When questions arose, legal counsel advised taking a conservative interpretation of the statute, until further clarification is provided by the legislature or the courts on this matter. Of the 47 existing permit types, the following nine permits are excluded from determinations of completeness and the new project review timelines:

1. Home businesses
2. Special needs group housing safety determination
3. Temporary commerce on public property
4. Transportation concurrency certificate
5. Final plat
6. Parking modification reviewed by the City Engineer
7. Final short plat
8. Development code interpretation
9. Comprehensive Plan, subarea plan, and development code amendments docketed through the process established in MICC 19.15.230

Site Plan Review

Section 1 of SB 5290 requires cities to exempt “interior alterations” from site plan review. For the purposes of SB 5290 Section 1, “interior alterations” are construction activities that do not modify the existing site layout or its current use and involve no exterior work adding to the building footprint.

Determination Of Completeness

[RCW 36.70B.070](#) sets the requirements for issuing a determination of completeness for project permit applications. A determination of completeness is a notice to the applicant that the submitted application contains all the necessary information for the code official to complete review of the project permit application. If a project permit application does not include all the information necessary to complete review, a letter of incompleteness detailing the additional submittals required is issued. Cities are required to issue determinations of completeness or a letter of incompleteness within 28 calendar days of application submittal.

The determination of completeness is an important step in the permit review process. The City does not begin its review of project permit applications until an application is deemed complete. The permit review timelines discussed below also begins at the time a determination of completeness is issued. The letter of incompleteness also serves an important function in the review process. Applicants currently have 90 days to respond to a letter of incompleteness. If an applicant fails to respond to a letter of incompleteness within 90 days, the application lapses ([MICC 19.15.070\(E\)](#)). This allows the City to expire delinquent project permit

applications and avoid unnecessary additional administrative costs for applications that the applicant does not move forward. Having a clear process for issuing determinations of completeness and letters of incompleteness is vital to the efficient operation of local project review.

Section 6 of SB 5290 substantively changes the requirements in RCW 36.70B.070 for issuing determinations of completeness for project permit applications in the following ways:

1. Clarification that the number of days for issuing a determination of completeness is counted as calendar days (SB 5290 Section 6(1)(c)).
2. Submittal requirements to project permit applications must be detailed on the application form (SB 5290 Section 6(2)).
3. Clarification that an application must be deemed procedurally complete on the 29th calendar day after receiving a project permit application if the local government does not provide a written determination of completeness or letter of incompleteness (SB 5290 Section 6(4)(a)).
4. If an applicant is non-responsive for more than 60 consecutive dates after the City has notified the applicant, in writing, that additional information is required to further process the application, an additional 30 days may be added to the time periods for local government action to issue a final decision in the time periods established by SB 5290 Section 7(1)(d) (SB 5290 Section 7(1)(i)).

SB 5290 Section 6 requires a determination of completeness for all “project permit applications” as defined in RCW 36.70B.020(4). Not all City land use review applications meet the definition of project permit applications. Land use review applications that do not fall under the definition of project permit applications in RCW 36.70B.020 do not require a determination of completeness. The land use applications that do not meet the definition of project permit application are listed above, on page 4.

Permit Review Timelines

The most significant change enacted by SB 5290 is the establishment of permit review timelines in Section 7. These timelines are the maximum amount of time a city or county can have a project permit application in review before a decision must be issued. The permit review timelines are set relative to the issuance of a determination of completeness.

The maximum timelines in SB 5290 Section 7(1)(d) are as follows:

- For project permits which do not require public notice under [RCW 36.70B.110](#), a local government must issue a final decision within 65 days of the determination of completeness. This affects many Type I and II land use reviews as categorized in MICC 19.15.030.
- For project permits which require public notice under RCW 36.70B.110, a local government must issue a final decision within 100 days of the determination of completeness. This will affect Type III land use reviews as categorized in MICC 19.15.030.
- For project permits which require public notice under RCW 36.70B.110 and a public hearing, a local government must issue a final decision within 170 days of the determination of completeness. This will affect Type IV land use reviews categorized in MICC 19.15.030.

SB 5290 Section 7(1)(l)(i) establishes a new penalty for missing the permit review deadline, depending on the permit type and the amount of time the review timeline is exceeded by. This is summarized in the table below:

| Land Use Permit Type | Review Timeline | Refund/Discount Timeline Threshold | Refund/Discount Percentage |
|----------------------|-----------------|------------------------------------|----------------------------|
| Type I & II | 65 days | 66-78 days | 10% |
| | | 79+ days | 20% |
| Type III | 100 days | 101-120 days | 10% |
| | | 121+ days | 20% |
| Type IV | 170 days | 171-204 days | 10% |
| | | 205+ days | 20% |

SB 5290 Section 7(1)(l)(i) also includes an exemption from the penalties described above, if three of the ten “streamlining strategies” in [RCW 36.70B.160](#) are implemented.

The ten streamlining strategies are as follows:

1. Expediting review for project permit applications for projects that are consistent with adopted development regulations.
2. Imposing reasonable fees, consistent with RCW 82.02.020, on applicants for permits or other governmental approvals to cover the cost to the city, town, county, or other municipal corporation of processing applications, inspecting and reviewing plans, or preparing detailed statements required by chapter 43.21C RCW. The fees imposed may not include a fee for the cost of processing administrative appeals. Nothing in this subsection limits the ability of a county or city to impose a fee for the processing of administrative appeals as otherwise authorized by law.
3. Entering into an interlocal agreement with another jurisdiction to share permitting staff and resources.
4. Maintaining and budgeting for on-call permitting assistance for when permit volumes or staffing levels change rapidly.
5. Having new positions budgeted that are contingent on increased permit revenue.
6. Adopting development regulations which only require public hearings for permit applications that are required to have a public hearing by statute.
7. Adopting development regulations which make preapplication meetings optional rather than a requirement of permit application submittal.
8. Adopting development regulations which make housing types an outright permitted use in all zones where the housing type is permitted.
9. Adopting a program to allow for outside professionals with appropriate professional licenses to certify components of applications consistent with their license.
10. Meeting with the applicant to attempt to resolve outstanding issues during the review process. The meeting must be scheduled within 14 days of a second request for corrections during permit review. If the meeting cannot resolve the issues and a local government proceeds with a third request for additional information or corrections, the local government must approve or deny the application upon receiving the additional information of corrections.

Following the analysis of the requirements of SB 5290, staff identified sections in the MICC that would need to be amended. The interim regulations would amend MICC 19.15.030, MICC 19.15.040, MICC 19.15.060, MICC 19.15.070, and MICC 19.16.010 as follows.

MICC 19.15.030

MICC 19.15.030 establishes review types for all land use reviews. The land use review type determines the steps required for review and issuing a decision. Building permits are also included in the review types, and in the following section, since they are subject to the process and timeline requirements of SB 5290. Ordinance No. 24C-17 would amend MICC 19.15.030 by adding a new subsection G that clarifies that interior alterations are not subject to site plan review. This amendment is required by SB 5290 Section 1, which exempts interior alterations from site plan review (Exhibit 1, pages 5-6). Ordinance No. 24C-17 also includes reformatted and updated land use permit and permit processes tables (Exhibit 1, 6-13).

MICC 19.15.040

The code amendments proposed in this section are the new provisions being added to the existing interim regulations to comply with SB5290 section 7, which takes effect on January 1, 2025. MICC 19.15.040 establishes review procedures for processing permit applications. SB 5290 Section 7 requires the City to establish review timelines dependent on permit review type. For project permits which require public notice under RCW 36.70B.110, a local government must issue a final decision within 100 days of the determination of completeness. This will affect Type III land use reviews as categorized in MICC 19.15.030. For project permits which require public notice under RCW 36.70B.110 and a public hearing, a local government must issue a final decision within 170 days of the determination of completeness. This will affect Type IV land use reviews categorized in MICC 19.15.030.

MICC 19.15.040 also establishes certain time periods that would not be included in calculating the time period for issuance of a decision, which include when the City has notified the applicant that additional information is required to further process the application, any period when the applicant informs the city they would like to temporarily suspend review of the application, and any period after an administrative appeal is filed until the appeal is resolved.

SB 5290 Section 7(1)(l)(i) also establishes new penalties for missing the permit review deadline, unless three of the ten streamlining strategies found in RCW 36.70B.160 are implemented. The interim regulations established in Ordinance No. 24C-17 include these penalties in the form of permit fee refunds. Further analysis of the ten streamlining strategies is included in the work plan included in Attachment A of Ordinance 24C-17 (Exhibit 1). Staff will evaluate the feasibility of implementing the streamlining strategies in Mercer Island and make a recommendation for City Council consideration prior to adoption of permanent regulations.

MICC 19.15.060

MICC 19.15.060 establishes materials that are required for an application to be determined complete, and review may commence. [RCW 36.70B.070](#) requires cities to list specific materials and requirements for a complete application to provide clarity to the applicant and streamline the completeness review process so that the review timeline may begin.

MICC 19.15.070

MICC 19.15.070 establishes the requirements for issuing determinations of completeness and letters of incompleteness for land use reviews. Ordinance No. 24C-17 would amend MICC 19.15.070(A), (B), and (D).

MICC 19.16.010

MICC 19.16.010 establishes the definitions for terms used throughout Title 19 MICC. Ordinance No. 24C-17 would amend MICC 19.16.010 to add a definition for interior alterations to clarify what would be exempted from site plan review by the amendments to MICC 19.15.030.

NEXT STEPS

Upon adoption of the interim development regulations in Ordinance No. 24C-17, the development and adoption of permanent development regulations will be placed on the CPD work plan for completion at a future time, currently anticipated to be in 2026 or later. Several CPD work plan commitments have already been made for 2025 including the renewal of several sets of interim regulations, addressing previously docketed items, as well as the development and execution of an affordable housing fee in-lieu-of program.

A comprehensive review and discussion of the long-term CPD work program will occur with the City Council at the conclusion of the 2025 state legislative session (Q2/Q3 2025). This will allow the City Council to review new state legislation requiring action by the City and to adjust the timeline and prioritize other work items accordingly.

RECOMMENDED ACTIONS

1. Complete the public hearing and first reading of Ordinance No. 24C-17.
2. Schedule Ordinance No. 24C-17 for second reading and adoption on December 3, 2024.