



BUSINESS OF THE CITY COUNCIL CITY OF MERCER ISLAND

AB 6146
September 6, 2022
Regular Business

AGENDA BILL INFORMATION

TITLE:	AB 6146: Code Amendments Related to Allowed Occupancy of Homes, Dwelling Units, and Adult Family Homes (Second Reading of Ordinance 22C-11 and 22C-12)	<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:	Adopt Ordinances 22C-11 and 22C-12	

DEPARTMENT:	Community Planning and Development
STAFF:	Jeff Thomas, Interim Director Alison Van Gorp, Deputy Director Adam Zack, Senior Planner
COUNCIL LIAISON:	n/a
EXHIBITS:	1. Draft Ordinance 22C-11 2. Draft Ordinance 22C-12
CITY COUNCIL PRIORITY:	n/a

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

EXECUTIVE SUMMARY

During the 2020 and 2021 state legislative sessions two land use related bills requiring City action were passed ([ESSB 5235](#) and [ESHB 1023](#)). 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. The timelines imposed by this legislation required the City to act quickly to comply with the new requirements. Emergency interim regulations were adopted by Ordinances [21C-19](#) and [21C-22](#) last fall. The interim regulations are set to expire on September 21, 2022. The City must adopt permanent regulations before the expiration date to maintain compliance with state law. Draft ordinances 22C-11 and 22C-12 would adopt permanent amendments to ensure the Mercer Island City Code (MICC) remains consistent with state law (Exhibits 1 and 2).

- The WA State Legislature adopted ESSB 5235 and ESHB 1023 during the 2020 and 2021 legislative sessions.
- To comply with amended state law, interim regulations were adopted in 2021 by Ordinances 21C-19 and 21C-22.
- The interim regulations will expire in September 2022. To maintain compliance with state law, permanent amendments must be adopted before the interim regulations expire.
- Ordinance 22C-11 will amend Title 19 MICC to comply with the changes enacted by ESSB 5235.

- Ordinance 22C-12 will amend Title 19 MICC to comply with the changes enacted by ESHB 1023.

BACKGROUND

The Planning Commission first discussed and gave initial feedback regarding Ordinance 22C-11 and 22C-12 on March 22, 2022. Staff prepared a draft code amendment based on the initial feedback for the Planning Commission to consider after holding a public hearing. A State Environmental Policy Act (SEPA) determination of non-significance was issued on March 21, 2022, and the project was assigned SEPA register file number 202201238. The SEPA determination comment period was open from March 21 to April 4, 2022; no comments were received. The WA Department of Commerce was notified of the intent to adopt development code amendments on March 21, 2022. Notice of the Planning Commission public hearing was published in the *Mercer Island Reporter* on March 23, 2022, and in the CPD Weekly Permit Bulletin on March 21, 2022. The Planning Commission held a public hearing regarding ZTR21-003 and made a recommendation on April 27, 2022. The City Council held the first reading of Ordinances 22C-11 and 22C-12 on June 21, 2022.

ISSUE/DISCUSSION

Ordinance 22C-11: Removing Limits on Unrelated Persons Cohabiting

Ordinance 22C-11 will amend the definitions of family and dwelling unit established in Chapter 19.16 MICC to permanently amend the definitions as required by changes in state law (Exhibit 1). The ordinance will also amend the Accessory Dwelling Unit (ADU) regulations to maintain consistency with the changes to family and dwelling unit definitions above and ESSB 5235. Ordinance 22C-11 will amend the definition of “family” and “dwelling” established in MICC 19.06.010 as shown in strikeout/underline format below (addition, ~~removal~~):

Family: One or more persons (~~but not more than six unrelated persons~~) living together in a single housekeeping unit. For purposes of this definition, persons with familial status and persons with handicaps within the meaning of the Fair Housing Amendments Act (FHAA), 42 U.S.C. Sections 3602(h) and (k) will not be counted as unrelated persons. The limitation on the number of unrelated residents set forth in this definition shall not prohibit the city from making reasonable accommodations, as required by the FHAA, 42 U.S.C. Section 3604(f)(3)(B) and as provided in MICC 19.01.030. The term “family” shall exclude unrelated persons who are not also handicapped or have familial status within the meaning of the FHAA who live together in social service transitional housing or special needs group housing. occupying a dwelling unit, including the joint use of and responsibility for common areas, sharing household activities and responsibilities such as chores, household maintenance, and expenses. Such persons need not be related by blood or marriage. A family does not include institutional or congregant group living situations such as boarding houses, dormitories, fraternities, sororities, monasteries, or nunneries.

Dwelling:

1. Dwelling unit: A ~~part of a multiple family dwelling containing only one kitchen, that houses not more than one family, plus any live-in household employees of such family~~ building or a contiguous portion of a building providing complete independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation (see also "Accessory Dwelling Unit (ADU)").

2. Multiple-family dwelling: A building, other than a single-family dwelling with an accessory dwelling unit, containing two or more dwelling units.
3. Single-family dwelling: A building designed and/or used to house not more than one family, plus any live-in household employees of such family.
4. Single-family dwelling—Detached: A single-family dwelling that is not attached to any other structure by any means and is surrounded by open space or yards.
5. Single-family dwelling—Semi-detached: A single-family dwelling that is attached to another dwelling unit by a common vertical wall, with each dwelling unit located on a separate lot.

Amendments to the City’s ordinances regarding ADU are also necessary to remain consistent with the changes to family and dwelling unit definitions above and ESSB 5235. Further, a minor change to the owner occupancy provision in MICC 19.02.030(B)(1) is needed to remain consistent with the changes to the definition of family proposed.

At the first reading of Ordinance 22C-11 on June 21, the City Council requested that staff prepare an alternative for MICC 19.02.030(B)(1) to replace the term “immediate family member” with a synonymous phrase that excludes the word family. The purpose of the alternative is to avoid confusion with the changes to the definition of “family” proposed elsewhere in Ordinance 22C-11 while continuing to require either a property owner or relative occupy one of the dwelling units on a property with both a single-family home and ADU. The staff proposed alternative for MICC 19.02.030(B)(1) is shown below in strikeout/underline format (addition, ~~removal~~):

B. *Requirements for accessory dwelling units.* One accessory dwelling unit is permitted as subordinate to an existing single-family dwelling; provided, the following requirements are met:

Staff Proposed Alternative:

1. *Owner occupancy.* Either the principal dwelling unit or the accessory dwelling unit must be occupied by an owner of the property or ~~an immediate family member~~ spouse, domestic partner, parent, stepparent, grandparent, sibling, child, stepchild, niece, nephew, cousin, aunt, or uncle of the property owner. Owner occupancy is defined as a property owner, as reflected in title records, who makes his or her legal residence at the site, as evidenced by voter registration, vehicle registration, or similar means, and actually resides at the site more than six months out of any given year.

Staff recommends the alternative above. The attached draft of Ordinance 22C-11 includes this alternative (Exhibit 1). This proposal will keep the existing allowance for either a property owner or relative of the property owner to occupy one of the dwelling units on a property with both a principal residence and ADU. The alternative achieves this while resolving potential conflicts arising from other amendments made by Ordinance 22C-11. The City Council can consider adding or removing relative types from the list if desired.

Ordinance 22C-11 will also amend MICC 19.02.030(B)(2) to strike the occupancy limit in response to ESSB 5235. The proposed amendment of MICC 19.02.030(B)(2) shown in ~~strikeout~~/underline format below (addition, ~~removal~~):

~~2. Number of occupants. The total number of occupants in both the principal dwelling and accessory dwelling unit combined shall not exceed the maximum number established for a family as defined in MICC 19.16.010 plus any live in household employees of such family.~~

During the first reading, the Council requested staff research an alternative to removing the limit on the number of occupants in MICC 19.02.030(B)(2). In considering an occupancy limit, the City must take into account ESSB 5235 Section 6, now codified as [RCW 35A.21.314](#), which states:

“Except for occupant limits on group living arrangements regulated under state law or on short-term rentals as defined in RCW 64.37.010 and any lawful limits on occupant load per square foot or generally applicable health and safety provisions as established by applicable building code or city ordinance, a code city may not regulate or limit the number of unrelated persons that may occupy a household or dwelling unit.”

The requirement in RCW 35A.21.314 is unequivocal, leaving the City without leeway to regulate the number of unrelated occupants in ADUs unless the regulation is for health or safety reasons. The City does not have an existing health or safety provision that regulates occupancy in a dwelling unit. Safety regulations are established in the building and fire codes (Title 17 MICC). The residential building code recently removed occupancy limits in residential structures. Currently, neither the building nor fire code limit the number of occupants in single-family residential structures such as ADUs. The health code in Title 8 MICC does not establish an occupancy limit in single-family residential structures.

Staff reviewed nearby jurisdictions’ development codes to see what approaches other jurisdictions have used. In general, nearby jurisdictions fall into three categories:

- (1) never regulated occupancy in ADUs;
- (2) struck ADU occupancy limits in response to ESSB 5235; or
- (3) have an occupancy limit for ADUs but appear to have not yet amended their code in response to ESSB 5235.

Most development codes reviewed fell into category 1, having never adopted an occupancy limit for ADUs. Additionally, of those jurisdictions that had an ADU occupancy limit and have made changes in response to ESSB 5235, all have struck that requirement. It does not appear that any cities have maintained or established an ADU occupancy limit after making amendments to comply with RCW 35A.21.314.

Given the strict language of the statutes, striking MICC 19.02.030(B)(2) remains the recommended action. Potential problems arising from removing the occupancy limit can be addressed by development standards regulating other aspects of ADUs. Regulations governing the size and dimensions of ADUs will remain in effect. Dimensional standards coupled with the owner-occupancy requirement mean the potential for ADUs to be used by large households or for congregant living is low. Furthermore, many cities have never adopted an occupancy limit; suggesting that ADU occupancy is largely self-regulating given their small size and requirements that they be accessory to a principal residence.

If the City Council is concerned about the potential impacts to neighbors resulting from removing the occupancy limit, staff recommends docketing an ADU code amendment to address those concerns for next year. If parking impacts, for example, are the principal concern, the City Council can docket a code amendment to update the parking regulations for ADUs. This will direct staff to prepare a code amendment to address the Council's concerns resulting from removing the ADU occupancy limit.

Ordinance 22C-12: Increase to the Allowed Number of Occupants in Adult Family Homes

Ordinance 22C-12 will amend the definition of "Adult Family Home" established in Chapter 19.16 MICC to remain consistent with [ESHB 1023](#) (Exhibit 2). 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. The proposed amendment to 19.16.010 MICC will increase maximum number of people allowed in adult family homes from six to eight to remain consistent with ESHB 1023. Accordingly, Ordinance 22C-12 will amend the adult family home definition in MICC 19.06.010 Definitions as shown below in strikeout/underline format (addition, ~~removal~~):

Adult Family Home: As defined and regulated by Chapter 70.128 RCW, an adult family home is the regular family abode of a person or persons who are providing personal care, special care, and room and board to more than one but not more than ~~six~~ eight adults who are not related by blood or marriage to the person or persons providing the services.

RECOMMENDED ACTION

1. Adopt Ordinance 22C-11 with staff proposed alternative for amending 19.02.030(B)(1).
2. Adopt Ordinance 22C-12 as presented.