

**CITY OF MERCER ISLAND  
ORDINANCE NO. 23C-10**

**AN INTERIM ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON, AMENDING MICC 19.15.030, LAND USE REVIEW TYPES, MICC 19.15.070, DETERMINATION OF COMPLETENESS AND LETTER OF COMPLETION; MICC 19.16.010, DEFINITIONS RELATING TO LAND USE REVIEW AND THE DETERMINATION OF COMPLETENESS; ADOPTING A WORK PLAN; PROVIDING FOR SEVERABILITY; DECLARING AN EMERGENCY; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the adoption of land use and zoning regulations is a valid exercise of the City's police power and is specifically authorized by RCW 35A.63.100; and

**WHEREAS**, within the express terms of the Growth Management Act, the Washington State Legislature has specifically conferred upon the governing bodies of Washington cities the right to establish and adopt interim development regulations; and

**WHEREAS**, local project review processes are governed by Chapter 36.70B RCW; and

**WHEREAS**, the Washington State legislature recently passed SB 5290, which amends Chapter 36.70B RCW to set new requirements for the processing of project permit applications; and

**WHEREAS**, SB 5290 becomes effective on July 23, 2023, with the exception that Section 7 relating to maximum permit review times which is not effective until June 30, 2025; and

**WHEREAS**, the City of Mercer Island must amend portions of the development code in Title 19 Mercer Island City Code (MICC) by July 23, 2023, to comply with SB 5290; and

**WHEREAS**, the City Council has determined that to comply with SB 5290 and thoroughly analyze permanent regulations, interim development regulations adopted under the provisions of RCW 36.70A.390 are necessary to allow adequate time for the City to adopt permanent development regulations in compliance with SB 5290; and

**WHEREAS**, the City is authorized under RCW 35A.63.220 and 36.70A.390 to pass an interim zoning and official control ordinance for up to one year if a work plan is developed for related studies providing for such a longer period; and

**WHEREAS**, City Staff have developed a work plan for related studies for compliance with SB 5290 and such work plan is attached to this Ordinance as Exhibit A; and

**WHEREAS**, the City is authorized under RCW 35A.63.220 and 36.70A.390 to pass an interim zoning and official control ordinance, provided it holds a public hearing on the same within sixty days after passage if it has not previously held a public hearing on the proposed ordinance; and

**WHEREAS**, the City Council held a public hearing on July 18, 2023 regarding this interim zoning and official control ordinance; and

**WHEREAS**, the deadline in SB 5290 for cities to adopt compliant development regulations cause an emergency which necessitates that this ordinance become effective immediately in order to preserve the public health, safety, and welfare and also requires action prior to the preparation of

a State Environmental Protection Act threshold determination pursuant to WAC 197-11-880 and MICC 19.21.160;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON DO HEREBY ORDAIN AS FOLLOWS:

- Section 1: Whereas Clauses Adopted.** The “Whereas Clauses” set forth in the recitals of this Ordinance are hereby adopted as the findings and conclusions of the City Council for passing this Ordinance.
- Section 2: Section 19.15.030 MICC, Land Use Review Types, Amended.** MICC Section 19.15.030, Land use review types, is hereby amended as shown in Exhibit B.
- Section 3: Section 19.15.070 MICC, Determination Of Completeness And Letter Of Completion, Amended.** MICC Section 19.15.070, Determination of completeness and letter of completion, is hereby amended as shown in Exhibit B.
- Section 4: Section 19.16.010 MICC, 19.16.010 Definitions, Amended.** MICC Section 19.16.010, Definitions, is hereby amended as shown in Exhibit B.
- Section 5: Duration of Interim Zoning and Official Controls.** The interim zoning and official controls approved by this Ordinance shall be effective immediately upon passage of this ordinance and continue in effect for a period of one year, unless repealed, extended, or modified by the City Council.
- Section 6. Adoption of Work Plan.** The work plan attached to this Ordinance as Exhibit A is hereby adopted.
- Section 7. Severability.** If any section, sentence, clause or phrase of this Ordinance or any municipal code section amended hereby should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause or phrase of this Ordinance or the amended code section.
- Section 8: Effective Date.** The City Council hereby finds and declares the deadlines in SB 5290 for cities to adopt compliant development regulations cause a public emergency which necessitates that this ordinance become effective immediately in order to preserve the public health, public safety, public property, or the public peace. This ordinance, which is not subject to referendum, shall become effective immediately upon passage by at least a majority plus one member of the City Council pursuant to RCW 35A.13.190. The City Clerk is directed to publish a summary of this ordinance at the earliest possible publication date.

PASSED BY THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON AT ITS MEETING ON JULY 18, 2023.

CITY OF MERCER ISLAND

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Salim Nice, Mayor

Approved as to Form:

ATTEST:

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Bio Park, City Attorney

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Andrea Larson, City Clerk

Date of Publication: \_\_\_\_\_

## EXHIBIT A

### State Mandated Code Amendments Work Plan

<ol style="list-style-type: none"><li>1. Technical analysis and staff recommendation<ol style="list-style-type: none"><li>a. Review peer city approaches</li><li>b. Analyze existing code criteria for determinations of completeness, permit review times, and other permit processes</li><li>c. Prepare staff recommendations and begin drafting a code amendment based on the above information</li><li>d. Prepare a SEPA checklist and determination on the proposed code amendment, provide notification to state agencies and tribes</li></ol></li></ol>	Q4 2023
<ol style="list-style-type: none"><li>2. Planning Commission review and recommendation on a draft code amendment<ol style="list-style-type: none"><li>a. Public outreach, including public hearing</li><li>b. Approximately 3 points of review by the commission – study session, public hearing, and recommendation</li></ol></li></ol>	Q1 2024
<ol style="list-style-type: none"><li>3. City Council review and approval of code amendment<ol style="list-style-type: none"><li>a. First and second reading of the ordinance</li></ol></li></ol>	Q2 2024

## EXHIBIT B

### MICC 19.15.030 Land Use Review Types.

There are four categories of land use review that occur under the provisions of the development code.

- A. *Type I.* Type I reviews are based on clear, objective and nondiscretionary standards or standards that require the application of professional expertise on technical issues.
- B. *Type II.* Type II reviews are based on clear, objective and nondiscretionary standards or standards that require the application of professional expertise on technical issues. The difference between Type I and Type II review is that public notification shall be issued for Type II decisions.
- C. *Type III.* Type III reviews require the exercise of discretion about nontechnical issues.
- D. *Type IV.* Type IV reviews require discretion and may be actions of broad public interest. Decisions on Type IV reviews are only taken after an open record hearing.
- E. The types of land use approvals are listed in Table A of this section. The required public process for each type of land use approval are listed in Table B of this section.
- F. *Consolidated permit processing.* An application for a development proposal that involves the approval of two or more Type II, III and IV reviews may be processed and decided together, including any administrative appeals, using the highest numbered land use decision type applicable to the project application. The following permits and land use reviews are excluded from consolidated review and approval:
  - 1. Building permits associated with the construction of one or more new single-family dwellings on lots resulting from the final plat approval of a short subdivision or long subdivision.
  - 2. Building permits associated with shoreline conditional use permits and shoreline variance.
  - 3. Project SEPA reviews shall be processed as a Type III land use review.
  - 4. When a review is heard by multiple decision bodies, the higher decision body will make the final decision, and the lower decision body will review the project at a public meeting and issue a recommendation that will be reviewed by the higher decision body. The higher decision body will either adopt the recommendation as part of the permit conditions, will remand the recommendation back to the lower body for further consideration, will amend the recommendation, or will deny adoption of the recommendation and will adopt their own permit conditions. The hierarchy of decision bodies is as follows, from highest to lowest:
    - a. City council;

- b. Hearing examiner;
- c. Design commission.

G. Interior Alterations Exempt From Site Plan Review.

1. Applications for interior alterations are exempt from site plan review provided they meet the following criteria:

- a. The proposed development does not result in additional sleeping quarters or bedrooms;
- b. The proposed development would not result in nonconformity with federal emergency management agency substantial improvement thresholds; or
- c. The proposed development would not increase the total square footage or valuation of the structure thereby requiring upgraded fire access or fire suppression systems.

2. Applications for interior alterations are subject to review for consistency with any otherwise applicable building, plumbing, mechanical, or electrical codes.

<b>Table A. Land Use Review Type</b>			
Type I	Type II	Type III	Type IV
<ul style="list-style-type: none"> <li>• Home business</li> <li>• Nonmajor single-family dwelling building permits</li> <li>• Tree removal permit</li> <li>• Right-of-way permit</li> <li>• Special needs group housing safety determination</li> <li>• Tenant improvement/change of use</li> <li>• Shoreline exemption<sup>1</sup></li> <li>• Critical area review<sup>1</sup></li> <li>• Temporary commerce on public property</li> <li>• Site development permits</li> <li>• Transportation concurrency certificate</li> </ul>	<ul style="list-style-type: none"> <li>• Modified wireless communication facilities (6409 per 47 CFR 1.40001)</li> <li>• Lot line revision</li> <li>• Setback deviations</li> <li>• Final plat<sup>2,3</sup></li> <li>• Code official design review</li> <li>• Accessory dwelling unit</li> <li>• Parking modification<sup>7</sup> (reviewed by city engineer)</li> <li>• Small wireless facility deployment</li> <li>• Seasonal development limitation waiver</li> <li>• Final short plat</li> </ul>	<ul style="list-style-type: none"> <li>• New and modified wireless (non-6409) eligible facility</li> <li>• SEPA threshold determination</li> <li>• Critical area review<sup>2</sup></li> <li>• Public agency exception</li> <li>• Temporary encampment<sup>4</sup></li> <li>• Short plat alteration and vacations</li> <li>• Preliminary short plat</li> <li>• Development code interpretations</li> <li>• Major single-family dwelling building permit<sup>5</sup></li> <li>• Shoreline substantial development permit<sup>1</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Preliminary long plat approval</li> <li>• Conditional use permit</li> <li>• Variance</li> <li>• Critical areas reasonable use exception</li> <li>• Long plat alteration and vacations</li> <li>• Parking modifications<sup>7</sup> (reviewed by design commission)</li> <li>• Variance from short plat acreage limitation</li> <li>• Wireless communication facility height variance</li> <li>• Planned unit development</li> </ul>

		<ul style="list-style-type: none"> <li>• Shoreline revision (substantial development)<sup>1</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Design commission design review</li> <li>• Permanent commerce on public property</li> <li>• Shoreline conditional use permit (SCUP)<sup>6</sup></li> <li>• Shoreline variance<sup>6</sup></li> <li>• Shoreline revision (variance and SCUP)</li> </ul>
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<sup>1</sup> Appeal will be heard by the shorelines hearings board.

<sup>2</sup> Decision is made by city council after discussion at a public meeting.

<sup>3</sup> A notice of decision will be issued for a final long plat.

<sup>4</sup> A public meeting is required.

<sup>5</sup> Major single-family dwelling building permits are subject only to the notice of application process. A notice of decision will be provided to parties of record.

<sup>6</sup> Hearing examiner will forward a recommendation to the Washington State Department of Ecology for Ecology's decision.

<sup>7</sup> Parking modifications are issued pursuant to the provisions of MICC 19.11.130.

<b>Table B. Review Processing Procedures</b>				
	Type I	Type II	Type III	Type IV
	No Notice of Application No Notice of Decision Code Official	Public Notification No Notice of Application No Notice of Decision Code Official	Notice of Application Notice of Decision Code Official	Notice of Application Public Hearing Notice of Decision Hearing Examiner/Design Commission
Preapplication meeting required	No	No	Yes	Yes
<del>Letter of completion</del> <u>Determination of Completeness<sup>3</sup></u> <del>(within 28 days)</del>	No	No	Yes	Yes
Public Notification	No	Yes	No	No
Notice of Application (mailing and posting)	No	No	Yes	Yes
Public Comment Period	None	None	30 days	30 days
Public Hearing (open record pre-decision)	No	No	No	Yes

Notice of Decision	Code Official	Code Official	Code Official	Hearing Examiner <sup>2</sup> or Design Commission
Notice of Decision	No	No	Yes	Yes
Appeal Authority	Hearing Examiner <sup>1</sup>	Hearing Examiner or Design Commission (code official design review)	Hearing Examiner	Superior Court or Shoreline Hearings Board (shoreline permits)

<sup>1</sup> Appeals of final short plat approvals shall be to superior court. Appeals of shoreline exemptions shall be to the shoreline hearings board.

<sup>2</sup> The hearing examiner will provide a recommendation to ecology for decisions on shoreline conditional use permits and shoreline variances.

<sup>3</sup> Determinations of completeness are subject to the standards in MICC 19.15.070.

**MICC 19.15.070 Determination of completeness and letter of completion.**

- A. Complete application required. The city will not accept an incomplete application for processing and review. An application is complete only when all information required on the application form ~~and all submittal items required by the development code have~~ has been provided to the satisfaction of the code official. The code official may request additional information or studies either at the time of the notice of completeness or subsequently if new information is required or substantial changes in the proposed action occur.
  
- B. Determination of completeness. Within 28 calendar days after receiving an application for a Type III and Type IV land use review, the city shall mail, email, or provide in person a written letter of completion or letter of incompleteness to the applicant, stating either that the application is complete or that the application is incomplete. If an application is incomplete, the letter of incompleteness shall identify what additional documentation is necessary to result in a procedurally complete application. To the extent known at the time of review, the code official shall identify other agencies of local, state, or federal governments that may have jurisdiction over some aspect of the application. An application shall be deemed complete if the city does not provide a written determination to the applicant stating that the application is incomplete within 28 days after receiving an application.
  - 1. At the discretion of the code official, the determination of completeness may include or be combined with any of the following:
    - a. A preliminary determination of those development regulations that will be used for project mitigation;
    - b. A preliminary determination of consistency, as provided under RCW 36.70B.040;
    - c. Other information the code official chooses to include; and
    - d. A notice of application issued in compliance with MICC 19.15.090.



- C. Response to letter of incompleteness. Within 14 days after an applicant has submitted all additional information identified as being necessary for a complete application, the city shall notify the applicant that the application is complete, or indicate that the application is incomplete and specify additional documentation as specified in subsection B of this section that is necessary to result in a complete application.
- D. Completion date. The date an application is determined complete is the date of receipt by the department of all of the information necessary to make the application complete as provided in this chapter. The department's issuance of a letter of complete application, or the failure of the department to provide ~~such a letter as directed by this section~~ the applicant a letter detailing what additional documentation is necessary to result in a complete application, shall cause an application to be conclusively deemed to be complete as provided in this section.
- E. If the applicant fails to provide the required information within 90 days of the letter of incompleteness, the application shall lapse.

**MICC 19.16.010 Definitions.**

[ ... ]

*Interior Alteration:* Construction activities that do not modify the existing site layout or its current use and involve no exterior work adding to the building footprint.

[ ... ]