



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

**AB 6305
July 18, 2023
Public Hearing**

AGENDA BILL INFORMATION

TITLE:	AB 6305: Public Hearing: Interim Regulations Related to Permit Processing in Chapters 19.15 and 19.16 MICC (Ordinance No. 23C-10)	<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:	Conduct public hearing and adopt Interim Emergency Ordinance No. 23C-10 for interim regulations related to permit processing in Chapters 19.15 and 19.16 MICC.	

DEPARTMENT:	Community Planning and Development
STAFF:	Jeff Thomas, Director Adam Zack, Senior Planner
COUNCIL LIAISON:	n/a
EXHIBITS:	1. Ordinance No. 23C-10 for Interim Regulations Related to Permit Processing in Chapters 19.15 and 19.16 MICC
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-10 (Exhibit 1), which would establish interim regulations in Title 19 Mercer Island City Code (MICC) to comply with Senate Bill 5290.

- [Senate Bill 5290](#) (SB 5290) was enacted by the Washington (WA) State Legislature in 2023.
- SB 5290 amends [Chapter 36.70B RCW](#), which establishes the required processes for local project review.
- SB 5290 changes the requirements for determinations of completeness for project permit applications.
- Cities and counties must comply with most provisions of SB 5290 by July 23, 2023, the bill’s effective date.
- SB 5290 also adds a new requirement for cities and counties to establish maximum permit review times, but that section (SB 5290 Section 7) is not effective until January 1, 2025.
- Amendments to [Mercer Island City Code \(MICC\) 19.15.030 – Land use review types](#), [MICC 19.15.070 – Determination of completeness and letter of completeness](#), and [MICC 19.16.010 – Definitions](#) are required to comply with SB 5290.

- The July 23rd deadlines in SB 5290 for cities to adopt compliant development regulations cause a public emergency which necessitates that Ordinance No. 23C-10, which as a land use ordinance is not subject to referendum, become effective immediately for the protection of public health, public safety, public property, or the public peace pursuant to RCW 35A.13.190 upon passage by at least a majority plus one member of the City Council.
- An ordinance with interim regulations can be adopted to temporarily amend the development code as needed while the City develops permanent regulations to address SB 5290.

BACKGROUND

[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 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. Recently enacted legislation, SB 5290, requires some amendments to Chapter 19.15 MICC by July 23, 2023.

SB 5290

Chapter 36.70B Revised Code of Washington (RCW) 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 some sections in Chapter 36.70B RCW. The bill's effective date is July 23, 2023. Cities must ensure their land use review regulations comply with SB 5290, except for Section 7, by July 23, 2023. Section 7 of SB 5290 does not become effective until 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 are required by July 23, 2023, to comply with SB 5290. See the discussion of Emergency Ordinance No. 23C-10 below for more detail on the amendments predicated by SB 5290 Section 1.
- **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.
- **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. This section requires amendments of the Mercer Island City Code by July 23, 2023. See the discussion of Ordinance No. 23C-10 below for more detail on the amendments required by SB 5290 Section 6.
- **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. SB 5290 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. See the discussion of permit review timelines below for more detail on SB 5290 Section 7.

- **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 can consider as it works to adopt permanent regulations to comply with SB 5290.
- **Section 13.** Sets the effective date for SB 5290 Section 7 for January 1, 2025.

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.

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.

Determinations 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 begin at the time a determination of completeness is issued. The letters of incompleteness also serve an important function in the review process. Applicants 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 incomplete applications. 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 changes the requirements in RCW 36.70B.070 for issuing determinations of completeness for project permit applications. The first substantive change is a clarification that the number of days for issuing a determination of completeness is counted as calendar days (SB 5290 Section 6(1)(c)). The second substantive change is that submittal requirements to project permit applications must be detailed on the application form (SB 5290 Section 6(2)). The third substantive change is that an application must be deemed procedurally complete on the 29th 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)).

SB 5290 Section 6 requires a determination of completeness for all “project permit applications” as defined in RCW 36.70B.020(4). Not all land use review applications the City reviews meet the definition of project permit applications. Those 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.

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) also establishes a new penalty for missing the permit review deadline. Cities and counties must refund or not collect 10 percent of the permit fee if a decision is made after the applicable deadline but the period from the passage of the deadline to the time of issuance of the final decision did not exceed 20 percent of the original time period. Cities and counties must refund or not collect 20 percent of the permit fee if the period from the passage of the deadline to the time of the issuance of the final decision exceeded 20 percent of the original time period.

The provisions of SB 5290 Section 7 do not become effective until January 1, 2025, giving the City time to enact these more substantial changes to project permit review. The permit review deadlines will require amendments to section in Chapter 19.15 MICC and changes to administrative processes to ensure compliance.

ISSUE/DISCUSSION

Interim regulations are needed to ensure the MICC is consistent with Chapter 36.70B RCW as amended by SB 5290. Ordinance No. 23C-10 would enact those interim regulations for a period of one year. This will give the City time to review permanent amendments to comply with SB 5290. The interim regulations would amend MICC 19.15.030, 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. Ordinance No. 23C-10 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 (see page 11). Ordinance No. 23C-10 also includes a new note 3 for MICC 19.15.030 Table B to clarify that determinations of completeness are subject to the standards in MICC 19.15.070 (see page 13).

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. 23C-10 would amend MICC 19.15.070(A), (B), and (D) (see page 13 and 14).

MICC 19.16.010

MICC 19.16.010 establishes the definitions for terms used throughout Title 19 MICC. Ordinance No. 23C-10 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 (see page 14).

Work Plan

Cities adopting interim regulations for a period longer than six months must also adopt a work plan for adopting permanent regulations (RCW 36.70A.390). Ordinance No. 23C-10 includes a work plan in Exhibit A. The work plan targets adoption of permanent regulations by the end of the second quarter of 2024. The permanent regulations will include work necessary to address the permit review timelines from SB 5290 Section 7.

NEXT STEPS

Staff will draft permanent regulations for the City Council's consideration and adoption according to the work plan established in Ordinance No. 23C-10.

RECOMMENDED ACTION

1. Conduct the public hearing.
2. Adopt Emergency Ordinance No. 23C-10 for interim regulations related to permit processing in Chapter 19.15 and 19.16 MICC.