



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

**AB 6104
June 21, 2022
Regular Business**

AGENDA BILL INFORMATION

TITLE:	AB 6104: Code amendments related to allowed occupancy of homes, dwelling units, and adult family homes (First Reading of Ordinances 22C-11 and 22C-12)	<input type="checkbox"/> Discussion Only <input checked="" type="checkbox"/> Action Needed: <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution
RECOMMENDED ACTION:	Schedule a second reading of Ordinances 22C-11 and 22C-12 for July 19, 2022	

DEPARTMENT:	Community Planning and Development
STAFF:	Jeff Thomas, Interim Community Planning & Development Director Alison Van Gorp, Deputy Community Planning & Development Director Adam Zack, Senior Planner
COUNCIL LIAISON:	n/a
EXHIBITS:	1. Draft Ordinance 22C-11 2. Draft ordinance 22C-12 3. Planning Commission Recommendation dated April 27, 2022
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 conduct a first reading of Ordinances 22C-11 and 22C-12 related to allowed occupancy of homes, dwelling units, and adult family homes.

- During the 2020 and 2021 state legislative sessions, two land use related bills requiring City action were passed ([ESSB 5235](#) and [ESHB 1023](#)).
- The timeline 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](#) at the September 21, 2021, City Council meeting. 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.
- Ordinance 22C-11 (Exhibit 1) will amend the Mercer Island City Code (MICC) to adopt the following changes as required by ESSB 5235:
 - The definition of “family” to remove limits to unrelated occupants in single-family homes;

- The definition of “dwelling unit” to be consistent with the proposed amendment to the definition of family; and
- Accessory Dwelling Unit (ADU) occupancy limits.
- Ordinance 22C-12 (Exhibit 2) will amend the definition of “Adult Family Home” established in Chapter 19.16 MICC to increase the number of people allowed from six to eight as required by [ESHB 1023](#).

BACKGROUND

Staff has consolidated the legislative review of the code amendments related to ESSB 5235 and ESHB 1023 under zoning code amendment file number ZTR21-003, because they both 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.

In September 2021, the City adopted two interim ordinances (21C-19 and 21C-22) to establish temporary definitions that comply with the changes in state law. The interim ordinances expire on September 21, 2022. Permanent amendments to the development code must be adopted prior to the expiration of the interim ordinances to ensure the City remains compliant with the requirements set in state law. The code amendments in Ordinances 22C-11 and 22C-12 will implement the necessary permanent amendments (Exhibits 1 and 2). Note: a third interim ordinance (21C-23) was also adopted in September 2021 to comply with a third legislative requirement in E2SHB 1220. Staff will be bringing a separate recommendation for City Council review in July related to this item.

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 (Exhibit 3).

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. [ESSB 5235](#) prohibits cities and counties 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. The definition of “family” is established in [Mercer Island City Code \(MICC\) 19.16.010 Definitions](#). The Planning Commission has recommended the following amendment to the definition of family:

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.~~

This proposed amendment is consistent with how other cities are amending their codes (for example, Lake Forest Park took a similar approach when it amended its code in response to ESSB 5235 last year). Use of the term “dwelling unit” instead of housekeeping unit is consistent with terms used elsewhere in the MICC, including the building code. Please also be advised that the City can still enforce other portions of its code relating to parking, noise issues, fire code, etc. if concerns arise about the impacts of increased occupancy.

Amending the definition of family also requires a change to the definition of “dwelling.” The proposed amendment will also make the definition in MICC 19.16.010 Definitions more consistent with terms used in the building code. The Planning Commission recommends the following amendment to the definition of “dwelling unit”:

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.

Finally, amendments to the ADU code are also necessary to remain consistent with the changes to family and dwelling unit definitions above and ESSB 5235. The Planning Commission recommended amendment removes the cap on the number of occupants and clarify the owner occupancy provisions in MICC 19.02.030(B). The change to MICC 19.02.030(B)(1) will replace the term “immediate” with “chosen” family

member given the changes to the definition of family. This will allow for the wide range of relationships that constitute family while keeping the owner-occupancy requirement intact. The amendment to MICC 18.02.030(B)(2) removes the connection between number of occupants allowed in an ADU and the definition of family, as required by ESSB 5235. The number of occupants allowed in an ADU will still be regulated by the provisions of the building code, which set occupancy based on health and safety requirements. The recommended amendment is shown below

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:

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~~ chosen family member 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.

~~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.~~

Ordinance 22C-12: Increase to Capacity for 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). The previously adopted definition in 19.16.010 MICC establishes the maximum number of people allowed in adult family homes at six. ESHB 1023 provides that the Department of Social and Health Services, in certain circumstances, can approve an adult family home to provide services for up to eight adults (previously, the limit was six adults). To remain consistent with ESHB 1023, the definition in MICC 19.16.010 must be amended to increase the maximum number of people allowed in adult family homes to eight. Accordingly, the Planning Commission recommends the following amendment to the adult family home definition in MICC 19.06.010 Definitions:

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.

NEXT STEPS

The second City Council reading of Ordinances 22C-11 and 22C-12 is planned for July 19, 2022.

RECOMMENDED ACTION

Schedule a second reading of Ordinances 22C-11 and 22C-12 for July 19, 2022.