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# CITY OF MERCER ISLAND

## COMMUNITY PLANNING & DEVELOPMENT

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## PLANNING COMMISSION

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**TO:** Planning Commission

**FROM:** Alison Van Gorp, Deputy Director  
Adam Zack, Senior Planner

**DATE:** March 16, 2022

**SUBJECT:** ZTR21-003 – State Mandated Amendments

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### SUMMARY

During the 2020 and 2021 state legislative sessions two land use related bills passed, which require City action ([ESSB 5235](#) and [ESHB 1023](#)). Based on the timelines imposed by this legislation, the City had 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 in September, and the City must adopt permanent regulations before the expiration date to maintain compliance.

### BACKGROUND

Staff has consolidated the legislative review of the code amendments related to ESSB 5235 and ESHB 1023 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. Amendments to the Mercer Island City Code are required to comply. The City adopted two interim ordinances to comply with these requirements (Ordinance Nos. [21C-19](#) and [21C-22](#)). 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 complies with the requirements set in state law.

### **ESSB 5235: Housing Unit Inventory — Removing Limits on Unrelated Persons Cohabiting**

[ESSB 5235](#) prohibits cities 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](#). Staff proposes the following amendment to the definition of family in strikeout/underline format (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.~~

This is consistent with how other cities are amending their codes (for example, Lake Forest Park is also taking a similar approach). 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 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. Staff proposes the following amendment to the definition of "dwelling unit" in ~~strikeout/underline~~ format (addition, ~~removal~~):

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, an amendment to the Accessory Development Unit (ADU) code is also necessary. The proposed amendment will remove the occupancy requirement and clarify the owner occupancy provisions in MICC

19.02.030(B) so that they do not include the term “family” since it will no longer refer to close familial relationships. Instead, staff proposes directly specifying the relationships that are included in the owner occupancy clause, as 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:

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~~ a spouse, child, sibling, parent, grandparent or grandchild 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.~~

**ESHB 1023: Increase to Capacity for Adult Family Homes**

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 (previously, the limit was six adults). The definition establishes the number of people allowed in adult family homes. Accordingly, staff proposes the following amendment to the adult family home definition in MICC 19.06.010 Definitions 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.

**NEXT STEPS**

The Planning Commission will hold a public hearing on each proposed ordinance and make a recommendation to the City Council at their April 27, 2022, meeting. Once the Planning Commission has made a recommendation to the City Council, staff will bring the recommended draft code amendments to the City Council for a first reading.

**STAFF RECOMMENDATION**

Recommend approval of the code amendments detailed above. The changes to the State law leave the City with limited discretion in how the code must be amended. The changes proposed above have been reviewed by legal counsel for consistency with the state law. The expected effects of the changes to the definition of family and dwelling are negligible because amending these definitions will not influence the function of these uses already allowed under Title 19 MICC. Furthermore, changes to the State law mean that the City cannot limit the number of persons allowed in an adult family home to a number below eight.