

ORDINANCE NO. 2018-02

AN ORDINANCE of the City of Bainbridge Island, Washington, adopted pursuant to RCW 35A.63.220 and RCW 36.70A.390; imposing a temporary six-month moratorium on the acceptance of certain development; setting forth findings of fact in support of this moratorium; imposing the moratorium; stating the effect on vested rights; providing for exclusions; recognizing that a public hearing will be held within 60 days; authorizing interpretative authority; providing for severability; declaring an emergency; setting the duration; and establishing an immediate effective date.

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 moratoria related to land uses; and

WHEREAS, the City Council of the City of Bainbridge Island (“City”) updated the City’s Comprehensive Plan in February of 2017; and

WHEREAS, the City Council has significant concerns about development and growth in the City under current regulations in the context of the vision and goals of the City’s Comprehensive Plan, is discussing how to best accommodate growth and development in both general and specific ways, and finds that unless the City acts immediately to preserve the status quo, there are likely to be adverse impacts on the City and its citizens; and

WHEREAS, the City’s Comprehensive Plan states as a Guiding Principle No. 2 “Manage the water resources of the Island to protect, restore, and maintain their ecological and hydrological functions and to ensure clean and sufficient groundwater for future generations,” and consistent with that Guiding Principle, Guiding Policy 2.6 states “recognize the importance of our water resources to present and future generations of Bainbridge Islanders and apply the precautionary principle;” and

WHEREAS, the City Council’s concerns regarding likely adverse impacts related to growth and development under existing regulations require immediate attention by the Council and City staff and include, but are not limited to, the following:

- (1) Threatened harm to Bainbridge Island’s fresh water aquifers due to continued clearing of native forests and vegetation, as well as disturbance of native soils, which activities are currently in the process of being addressed through the City’s Critical Areas Ordinance update process; and
- (2) The loss of trees, forests, native vegetation, and soils, along with the full range of important ecosystem services and values that they provide to the community, as expressed, for example, by the City Council in the City’s Comprehensive Plan, as well as concerns expressed by the Planning Commission, Design Review Board, and the Ad Hoc Tree/LID Committee; and
- (3) Compliance with design review standards, including as relates to, for example, Policy LU 6.8 of the City’s Comprehensive Plan, regarding the role of the Design Review Board, Hearing Examiner, Planning Commission, and City Council in the land use development review and decision-making process, as well as related to meeting the goals of the Comprehensive Plan more generally, including its guiding principle to “Preserve the Island’s special character,” as well as other principles; and

(4) Serious challenges promoting affordable housing in a manner consistent with the City's Comprehensive Plan; and

WHEREAS, based on these and related concerns, the City Council requires additional time to review the regulations and policies at issue to ensure that the vision and goals of the City's Comprehensive Plan are being met to the Council's satisfaction; and

WHEREAS, the City possesses land use jurisdiction and regulatory authority over the City's incorporated lands; and

WHEREAS, the moratorium imposed herein promotes the public good and is necessary for the protection of public health, property, safety, and welfare. A public emergency exists requiring that the City's moratorium become effective immediately upon adoption.

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

Section 1. Findings of Fact. The recitals set forth above are hereby adopted as the City Council's initial findings of fact in support of the moratorium established by this ordinance. The City Council may, in its discretion, adopt additional findings after the public hearing referenced in Section 5 below.

Section 2. Moratorium Imposed. As authorized by the police powers of the City as set forth, for example, in Article XI, Section 11, of the Washington State Constitution, and pursuant to statutory authority set forth, for example, in RCW 36.70A.390 and RCW 35A.63.220, and unless expressly excluded under Section 3 and Section 4 of this ordinance, the City hereby imposes a temporary moratorium, as described in this Section 2, for those properties requesting the following ("Permit Applications"):

All building permit applications or land use applications included or otherwise described in Table 2.16.010-1 of Section 2.16.010 of the Bainbridge Island Municipal Code ("BIMC").

Section 3. Effect on Vested Rights. The moratorium imposed under Section 2 of this ordinance shall apply prospectively only, and shall operate to prevent acceptance of Permit Applications submitted after the effective date of this ordinance. Nothing in this ordinance shall be construed to extinguish, limit, or otherwise infringe on any permit applicant's vested development rights as defined by state law and City of Bainbridge Island regulations, provided that such a permit applicant has filed a complete Permit Application before the effective date of this ordinance.

Section 4. Exclusions. The provisions of this moratorium shall not apply to any Permit Applications or projects that are specifically excluded by the Exclusions set forth in this ordinance. These Exclusions, unless expressly modified by the City Council, are specifically limited to:

- A. "Legislative Approvals" as identified on Table 2.16.010-1 of BIMC 2.16.010.
- B. Permits and approvals that are vested by contract, such as those covered by an approved development agreement.

- C. Permits and approvals for government facilities and structures (e.g., streets, utilities, surface water facility improvements), including for facilities and structures of municipal corporations and special purpose districts (e.g., the City of Bainbridge Island, Bainbridge Island Metropolitan Park and Recreation District, Bainbridge Island School District, Bainbridge Island Fire Department, Kitsap Public Utility District No. 1, Kitsap County, Kitsap Regional Library).
- D. Permits and approvals for additions, alterations, or remodels to existing buildings when such additions, alterations, or remodels do not require a Site Assessment Review because they are exempt from such review pursuant to BIMC 15.19.040.
- E. Permits and approvals for emergency repairs or construction to protect people or property necessitated by a hazardous event or natural disaster (e.g., geologically unstable slope, fire, flooding, earthquake).
- F. Permits and approvals for removal and replacement of hazardous trees or invasive plant species.
- G. Permits and approvals for signs.
- H. Permits and approvals for emergency medical and disaster relief facilities.
- I. Permits and approvals for affordable housing projects.
- J. Permits and approvals for septic maintenance and repair activities.
- K. Permits and approvals for overwater structures that are allowed under the City's Shoreline Master Program.
- L. Permits and approvals for demolition.
- M. Permits and approvals for a boundary line adjustment.
- N. Permits and approvals for Wireless Communication Facilities.
- O. Building permit applications for single family residences in the R-0.4, R-1, and R-2 zones for single family residences that are not part of an approved subdivision, provided that the applicant owned the property as of the effective date of this ordinance, and further provided that a person or entity may only use this exclusion once.
- P. Building permit applications for a single family residence in a zone other than zones R-0.4, R-1, and R-2, provided that the building permit application for the single family residence is not for a permit that is part of an approved subdivision.
- Q. Building permit applications for complete site plan applications or other complete land use applications that had been submitted prior to the effective date of the moratorium.
- R. Building permit applications for single family residences that in addition to fully complying with the current critical areas ordinance also voluntarily comply with the new critical areas ordinance, 2018-01, specifically in regard to BIMC 16.20.100.E., Native Vegetation Protection Area Requirement. To be eligible for this exclusion, all such building permit applications for single family residences submitted during the moratorium

and until the newly updated critical areas ordinance is effective will not be accepted until the applicant has signed a certification provided by the City in which the applicant certifies that they will comply with the new critical areas ordinance, that they are voluntarily waiving their right to vest under the City's current critical areas regulations, and that they will not seek to revise or amend their application except as allowed under the new critical areas ordinance.

Section 5. Public Hearing. Pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City Council shall hold a public hearing at a City Council meeting within 60 days of adoption of this ordinance in order to take public testimony and to consider adopting further findings of fact.

Section 6. Interpretive Authority. The City of Bainbridge Island Director of Planning and Community Development, or designee, is hereby authorized to issue official interpretations arising under or otherwise necessitated by this ordinance.

Section 7. Severability. Should any section, paragraph, sentence, clause, or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 8. Declaration of Emergency; Effective Date; Duration. This ordinance, as a public emergency ordinance necessary for the protection of the public health, public safety, public property, and public peace, shall take effect and be in full force immediately upon its adoption. Pursuant to *Matson v. Clark County Board of Commissioners*, 79 Wn. App. 641 (1995), non-exhaustive underlying facts necessary to support this emergency declaration are included in the "Whereas" clauses above, all of which are adopted by reference as findings of fact as if fully set forth herein. This moratorium shall take effect immediately, and shall remain effective for six (6) months, unless terminated earlier by the City Council. Provided, that the Council may, at its sole discretion, renew the moratorium for one or more six month periods in accordance with state law. This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the City.

PASSED by the City Council this 9th day of January, 2018.

APPROVED by the Mayor this 9th day of January, 2018.



Kol Medina, Mayor

ATTEST/AUTHENTICATE:



Christine Brown, City Clerk

FILED WITH THE CITY CLERK
PASSED BY THE CITY COUNCIL
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO:

January 9, 2018
January 9, 2018
January 19, 2018
January 9, 2018
2018-02