

ORDINANCE NO. 2018-05

AN ORDINANCE of the City of Bainbridge Island, Washington, adopted pursuant to RCW 35A.63.220 and RCW 36.70A.390; amending and restating the temporary six month moratorium imposed by Ordinance No. 2018-02 and Ordinance No. 2018-03 to clarify the activities to which the moratorium applies; setting forth findings of fact in support of the moratorium; stating the effect on vested rights; providing for exclusions; recognizing that a public hearing is being held within 60 days of the moratorium; authorizing interpretative authority; providing for severability; declaring an emergency; setting the duration; and establishing an immediate effective date of this ordinance.

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 and guidelines, including as relates to, for example, Policy LU 6.8 of the City's Comprehensive Plan, and 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, on January 9, 2018, the City Council enacted Ordinance No. 2018-02 and thereby established a temporary emergency moratorium on the acceptance and processing of certain Permit Applications, as defined in Section 2 of Ordinance No. 2018-02; and

WHEREAS, the City Council and City staff received feedback and comment from individuals related to the moratorium and, based on that feedback and comment, the Council determined that certain exclusions to the moratorium needed to be amended to clarify the Council's intent regarding such exclusions; and

WHEREAS, on January 16, 2018, the Council enacted Ordinance No. 2018-03, which amended Ordinance No. 2018-02 to clarify some of the exclusions; and

WHEREAS, the Council and City staff have received additional feedback and comment from individuals related to the moratorium and, based on that feedback, the Council has determined that further amendment is necessary to clarify which types of activities are subject to the moratorium, and which activities are excluded from the moratorium; and

WHEREAS, the approach to the moratorium as set forth in Ordinance No. 2018-02 and Ordinance No. 2018-03 was to broadly apply the moratorium to all "Permit Applications" as defined in Section 2 of Ordinance No. 2018-02 and then to set forth several exclusions for activities that were explicitly excluded from the moratorium; and

WHEREAS, this approach has not been as clear and effective as intended because it has resulted in a lengthy list of exclusions that have caused some confusion in the community about how particular exclusions apply to specific situations, and the Council has determined that a better approach would be to instead simplify the moratorium by clearly stating what the moratorium applies to and limiting the exclusions; and

WHEREAS, generally, the moratorium is intended to apply to new residential development that involves more than development of a single-family home, as well as to other types of development and land use activities that would result in significant loss of native vegetation; and

WHEREAS, the moratorium is not intended to apply to certain affordable housing projects and to permits and approvals for limited other uses, such as government facilities and certain educational facilities; and

WHEREAS, this ordinance is intended to amend Ordinance No. 2018-02 and Ordinance No. 2018-03 by restating those ordinances in full with this ordinance, except with regard to the declaration of emergency, effective date, and duration provisions of the moratorium, such that the moratorium continues to have an effective date of January 9, 2018; and

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

WHEREAS, the moratorium promotes the public good and is necessary for the protection of public health, property, safety, and welfare, and a public emergency exists requiring that this ordinance become effective immediately upon adoption.

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

Section 1. Amendment and Restatement of Ordinance No. 2018-02 and Ordinance No. 2018-03. This ordinance hereby amends Ordinance No. 2018-02 and Ordinance No. 2018-03 and restates those ordinances in full, except with respect to the declaration of emergency, effective date, and duration provisions of those ordinances related to the moratorium. To be clear, this ordinance maintains the declaration of emergency that was initially declared imposing the moratorium, maintains the effective date of the moratorium as January 9, 2018, and maintains the duration of the moratorium, which is the six (6) month period that commenced on the effective date of the moratorium (January 9, 2018).

Section 2. Findings of Fact. The recitals set forth above are hereby adopted as the City Council's findings of fact in support of the moratorium.

Section 3. Imposition of Moratorium Amended and Restated. 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 4 and Section 5 of this ordinance, the City hereby amends and restates the currently existing temporary moratorium to apply to prohibit the following:

- A. All applications for new short subdivisions (BIMC 2.16.070), new preliminary long subdivisions (BIMC 2.16.125), and new large lot subdivisions (BIMC 2.16.080).
- B. Structures, buildings, and land use permits and approvals in the R-1, R-2 and R-0.4 zones likely to ~~that would~~ result in less than 65% of the subject property being retained as native vegetation, or if that percentage is already below 65% and is likely to be further reduced, except that a minimum development area of 12,500 square feet for any given lot or parcel located in those zones will be allowed ~~the conversion of~~

~~three-quarters of an acre, or more, of vegetation to hard surfaces (excluding driveways and site access), lawn, or landscape areas, or would convert 2.5 acres, or more, of native vegetation to pasture on the subject property.~~ This does not apply to complete land use applications (see BIMC Table 2.16.010-1) that were submitted prior to the effective date of the moratorium, and to the resultant site work and associated approvals related to such complete land use applications.

Section 4. Effect on Vested Rights. The moratorium shall not apply to any rights that legally vested under state law and City of Bainbridge Island regulations prior to the effective date of the moratorium. 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 or other applicable land use application prior to the effective date of the moratorium.

Section 5. Exclusions. The provisions of the moratorium shall not apply to any permits or land use approvals 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. Permits and approvals for affordable housing projects that qualify as Housing Design Demonstration Project (HDDP) Tier 3 projects pursuant to BIMC 2.16.020.Q. and Table 2.16.020.Q-1.
- B. Permits and approvals for government facilities and structures; private vocational training institutions, preschools, K-12, and higher education facilities; wireless communication facilities; and emergency medical and disaster relief facilities.

Section 6. 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 the effective date of the moratorium in order to take public testimony and to consider adopting further findings of fact. That hearing is currently set for February 13, 2018.

Section 7. 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 and the moratorium.

Section 8. 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 9. State Environmental Policy Act Exemption. Pursuant to WAC 197-11-880, this ordinance and the moratorium are exempt from the requirements of a threshold determination under the State Environmental Policy Act.

Section 10. 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 ordinance amending and restating the moratorium shall take effect immediately, and shall remain effective for the six (6) month period as established for the moratorium, which moratorium has an effective date of January 9, 2018, unless terminated earlier by the City Council. Provided, that the Council may, at its sole discretion, renew the moratorium for one or more six (6) 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 ___ day of February, 2018.

APPROVED by the Mayor this ___ day of February, 2018.

Kol Medina, Mayor

ATTEST/AUTHENTICATE:

Christine Brown, City Clerk

FILED WITH THE CITY CLERK	February 2, 2018
PASSED BY THE CITY COUNCIL	February __, 2018
PUBLISHED:	February __, 2018
EFFECTIVE DATE:	February __, 2018
ORDINANCE NO:	2018-05