



Department of Planning and Community Development

Memorandum

Date: February 9, 2018
To: City Council
From: Gary Christensen, AICP
Director
Subject: Public Hearing on Development Moratorium Ordinance 2018-02 (as amended by Ordinance 2018-03); Review of Proposed Ordinance 2018-05

BACKGROUND

On January 9, 2018, the City Council approved Ordinance 2018-02, a moratorium on certain development activities and permits. This moratorium ordinance was amended by Ordinance 2018-03 on January 16, 2018. The amendments approved in Ordinance 2018-03 clarified the development activities that were excluded from the moratorium in Ordinance 2018-02.

As required by state law, the City Council is required to hold a public hearing within 60 days of enactment of the emergency moratorium. **The public hearing on Ordinance 2018-02 (as amended by Ordinance 2018-03) is scheduled for February 13, 2018.**

On February 6, 2018, the City Council discussed Proposed Ordinance 2018-05. This ordinance was prepared by City staff to respond to a City Council request to simplify and clarify the development moratorium. The Council revised that proposed ordinance at its February 6 meeting, but the Council did not vote to adopt the ordinance in its entirety. If approved, Proposed Ordinance 2018-05 would replace Ordinance 2018-02 (as amended by Ordinance 2018-03) as the development moratorium. All three ordinances are attached to this agenda item for the Council's February 13, 2018, meeting.

CLARIFICATION REGARDING REVISED SECTION 3.B OF PROPOSED ORDINANCE 2018-05:

The Council passed a motion to revise Section 3.B. of the proposed ordinance (see attached Proposed Ordinance 2018-05). The following are suggested clarifications to the revised Section 3.B. as recommended by City staff. The drafted revisions are recommended to create clarity by reducing sentence length and creating subsections to ensure that the meaning is clear to readers.

The underlined text is what is proposed to be added to clarify this provision, and the ~~striketrough text~~ is what is recommended to be deleted. The moratorium would prohibit:

- B. Structures, buildings, and land use permits and approvals in the R-1, R-2, and R-0.4 zones;

- ~~(i) That will likely to result in less than 65% of the subject property being retained as native vegetation; or~~
- ~~(ii) if that percentage is already below 65% and is likely to be further reduced, t~~ That will result in reducing the native vegetation on the subject property by any amount if that property had native vegetation existing on less than 65% of the property as of the effective date of the moratorium.
- ~~(iii) Provided, that subsections (i) and (ii) do not prohibit structures, buildings, and land use permits and approvals in the R-1, R-2, and R-0.4 zones that will result in land disturbance except that a minimum development area of 12,500 square feet or less on the subject property for any given lot or parcel located in those zones will be allowed.~~
- ~~(iv) Provided further, that T~~ this Section B 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.

Notes for Consideration:

- (1)** The term “native vegetation” is defined in the Bainbridge Island Municipal Code (“BIMC”) but using this term will require staff to make a distinction between “vegetation” more generally and “native vegetation.”
- (2)** If the term “native vegetation” is used, it is expected that the City would need to verify that no more than the allowed amount of *native* vegetation is being disturbed.
- (3)** Alternatively, if the more general term “vegetation” is used, no such verification will be necessary from applicants beyond what may be required by the Site Assessment Review process (chapter 15.19 BIMC).
- (4)** However, given that the term “vegetation” is a broader term than “native vegetation,” if “vegetation” is used, the moratorium will apply more broadly than if “native vegetation” is used.
- (5)** In light of such considerations, this provision as drafted previously in the draft of proposed Ordinance No. 2018-05 that the Council considered on February 6 (before revision, see below) used existing standards from stormwater regulations. The thinking by City staff in crafting that provision was that it was preferable to use such existing general standards rather than using criteria that are derived from the proposed Critical Areas Ordinance (“CAO”) Update (e.g., protection of 65% of native vegetation on subject properties, reference to 12,500 square feet of area to be developed). The [Critical Areas Ordinance Update project website](#) and [Native Vegetation Protection Area Summary Sheet](#) are hyperlinked to provide background information.

Staff pursued this approach because the 65% and 12,500 square foot standards referenced above are tied to other provisions in the CAO Update that aren’t currently included in the moratorium, such as thresholds related to development or redevelopment that results in greater than 800 square feet of hard surfaces or greater than 7,000 square feet of land disturbing activity. Additionally, because the requirements proposed in the CAO Update have not yet been adopted, those proposed requirements are subject to change until the Council takes final action on the CAO Update.

With that as context, the proposal that was provided to the Council as part of DRAFT Ordinance No. 2018-05 in the agenda packet for the Council’s February 6 meeting, as relates to Section 3, included a prohibition for:

- B. Structures, buildings, and land use permits and approvals that would result in 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.

(6) Note, too, that the previously proposed provision, as included directly above, would have applied city-wide, whereas the current version is limited to the R-1, R-2, and R-0.4 zones. If the Council has interest in the version directly above and modifying it to apply only in those zones, the first sentence could be revised to add “in the R-1, R-2, and R-0.4 zones” after the word “approvals.”

APPLICATION OF MORATORIUM ORDINANCES TO SITE PLAN AND DESIGN REVIEW & CONDITIONAL USE PERMITS:

At the Council meeting on February 6, 2018, interest was expressed by the Council in comparing the provisions of the existing moratorium to the revisions that are being proposed in DRAFT Ordinance 2018-05 and Proposed Ordinance No. 2018-05 (the revised version of the ordinance) as related to Major Site Plan and Design Reviews and to Major Conditional Use Permits. The following is a summary comparison regarding the existing moratorium (as stated in Ordinance No. 2018-02 and Ordinance No. 2018-03), the version of the proposed moratorium ordinance that was before the Council at its meeting on February 6, 2018 (DRAFT Ordinance No. 2018-05), and the version of Proposed Ordinance No. 2018-05 that was revised by motion at the Council meeting on February 6 to include a revised Section 3.B. (as described and considered above).

When is a Major Site Plan and Design Review Required?

Generally speaking, a Site Plan and Design Review is required for the following types of development proposals ([BIMC 2.16.040.B](#)):

- New construction of buildings or other structures (not including single-family residences and their accessory buildings/structures);
- The expansion, remodel, or alteration of any building or other structure (as applied above) by more than five percent of its existing floor area, or overall size; or expansion that creates a new dwelling unit in multifamily development;
- A change of use to an existing building or property, where traffic, parking, noise or other impacts are greater than the impacts for the previously existing use, as determined by the Planning Director;
- The construction of new wireless communications support structures.

Smaller projects may qualify to be reviewed through the *Minor Site Plan and Design Review* process pursuant to [BIMC 2.16.040.C.1](#). Maintenance or remodel projects may be exempt from the requirement to obtain a Site Plan and Design Review as described in [BIMC 2.16.040.B.2](#).

A. Application of the Current Moratorium (Ordinance 2018-02 as amended by Ordinance 2018-03) to Major Site Plan and Design Reviews

Under the moratorium as currently enacted via Ordinance No. 2018-02 as amended by Ordinance No. 2018-03, the moratorium **applies** to Major Site Plan and Design Reviews as follows:

- The moratorium prohibits applications for **new** Site Plan and Design Review.
- The current moratorium doesn't distinguish between minor and major site plan and design reviews.

- Submitted and complete site plan and design review applications are specifically addressed in Exclusion Q (see below), which **excludes** such applications from the moratorium:

Q. Permits and approvals for complete site plan and design review applications or other complete land use applications that had been submitted prior to the effective date of the moratorium, and any such applications that have been approved and for which such approval has not expired.

- Also **excluded** from the moratorium are new applications for site plan and design reviews for affordable housing projects, government facilities and structures, wireless communication facilities, and emergency medical and disaster relief facilities, or additions or remodels to existing buildings.

B. Application of DRAFT Ordinance No. 2018-05 (as included in the agenda packet for the Council's February 6, 2018, meeting, prior to revision) to Major Site Plan and Design Reviews:

- DRAFT Ordinance 2018-05 as proposed doesn't distinguish between minor and major site plan and design reviews.
- DRAFT Ordinance 2018-05 would allow new site plan and design reviews for smaller projects to be submitted if the thresholds described in Section 3.B are not exceeded (see highlight section below):

3.B. Structures, buildings, and land use permits and approvals that would **result in 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.

- DRAFT Ordinance 2018-05 allows site plan and design reviews to be submitted and proceed as provided in Exclusions 5.A and 5.B., which provide for limited exclusions, such as related to affordable housing projects; 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.

C. Application of Proposed Ordinance No. 2018-05 (as revised by the Council on February 6, 2018, and as potentially further revised) to Major Site Plan and Design Reviews

- Proposed Ordinance 2018-05 doesn't distinguish between minor and major site plan and design reviews.
- The ordinance generally allows site plan and design reviews to be submitted and proceed unless prohibited by revised Section 3.B. (see below), which prohibits:

3.B. Structures, buildings, and land use permits and approvals in the R-1, R-2, and R-0.4 zones likely to 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. 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.

- If the Council decides to revise Section 3.B. further as recommended in the first part of this memorandum (see pages 1-2), that version of the ordinance would also generally allow site plan and design reviews to proceed unless prohibited by revised Section 3.B., which would prohibit (as potentially revised, see below):
 - B. Structures, buildings, and land use permits and approvals in the R-1, R-2, and R-0.4 zones:
 - (i) That will result in less than 65% of the subject property being retained as native vegetation; or
 - (ii) That will result in reducing the native vegetation on the subject property by any amount if that property had native vegetation existing on less than 65% of the property as of the effective date of the moratorium.
 - (iii) Provided, that subsections (i) and (ii) do not prohibit structures, buildings, and land use permits and approvals in the R-1, R-2, and R-0.4 zones that will result in land disturbance of 12,500 square feet or less on the subject property.
 - (iv) Provided further, that this Section B 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.
- To the extent that either version of Section 3.B. would prohibit site plan and design reviews, that prohibition would apply in the R-1, R-2, and R-0.4 zones, but not in the denser zones.
- If Proposed Ordinance 2018-05 is approved, outside of the R-1, R-2, and R-0.4 zones, the moratorium would only apply to subdivisions, and to site plan and design reviews that require a commercial subdivision.

When is a Conditional Use Permit Required?

A Conditional Use Permit is required when a development proposal is listed as “Conditional” in the zoning district where it is proposed, as shown on [BIMC Table 18.09.020](#). The permit review process and criteria for Major and Minor Conditional Use permits are described in [BIMC Section 2.16.110](#) and [Section 2.16.050](#), respectively. **Note: If a Conditional Use Permits is required, it is almost always done in conjunction with a Site Plan and Design Review.**

A. Application of the Current Moratorium (Ordinance 2018-02 as amended by Ordinance 2018-03) to Major Conditional Use Permits

Under the moratorium as currently enacted via Ordinance No. 2018-02 as amended by Ordinance No. 2018-03, the moratorium **applies** to Conditional Use Permits (“CUPs”) as follows:

- The moratorium prohibits applications for **new** CUPs.
- The current moratorium doesn’t distinguish between minor and major CUPs.
- The current moratorium doesn’t specifically address CUPs, and the moratorium doesn’t include any specific exclusion for CUPs.
- However, **excluded** from the moratorium are new applications for permits and approvals (including CUPs) to develop affordable housing projects, government facilities and structures, emergency medical and disaster relief facilities or for additions or remodels to existing buildings.

B. Application of DRAFT Ordinance No. 2018-05 (as included in the agenda packet for the Council's February 6, 2018, meeting, prior to revision) to Conditional Use Permits

- DRAFT Ordinance 2018-05 as proposed doesn't distinguish between minor and major CUPs.
- As with Site Plan and Design Reviews as summarized above (page 4), DRAFT Ordinance 2018-05 would allow new CUPs for smaller projects to be submitted if the thresholds described in Section 3.B are not exceeded (see highlight section below):

3.B. Structures, buildings, and land use permits and approvals that would result in 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.

- DRAFT Ordinance 2018-05 allows CUPs to be submitted and proceed as provided in Exclusions 5.A and 5.B., which provide for limited exclusions, such as related to affordable housing projects; 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. NOTE: In residential zones, the institutional-type uses listed in exclusions 5.A and 5.B would usually require a CUP (and Site Plan and Design Review).

C. Application of Proposed Ordinance No. 2018-05 (as revised by the Council on February 6, 2018, and as potentially further revised) to Conditional Use Permits

- Proposed Ordinance 2018-05 doesn't distinguish between minor and major CUPs.
- The ordinance generally allows CUPs to be submitted and proceed unless prohibited by revised Section 3.B.(see below), which prohibits:

3.B. Structures, buildings, and land use permits and approvals in the R-1, R-2, and R-0.4 zones likely to 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. 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.

- If the Council decides to revise Section 3.B. further as recommended in the first part of this memorandum (see pages 1-2), that version of the ordinance would also generally allow CUPs to proceed unless prohibited by revised Section 3.B., which would prohibit (as potentially revised, see below):

B. Structures, buildings, and land use permits and approvals in the R-1, R-2, and R-0.4 zones:

- (i) That will result in less than 65% of the subject property being retained as native vegetation; or

- (ii) That will result in reducing the native vegetation on the subject property by any amount if that property had native vegetation existing on less than 65% of the property as of the effective date of the moratorium.
 - (iii) Provided, that subsections (i) and (ii) do not prohibit structures, buildings, and land use permits and approvals in the R-1, R-2, and R-0.4 zones that will result in land disturbance of 12,500 square feet or less on the subject property.
 - (iv) Provided further, that this Section B 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.
- To the extent that either version of Section 3.B. would prohibit CUPs, that prohibition would apply in the R-1, R-2, and R-0.4 zones, but not in the denser zones.
 - If Proposed Ordinance 2018-05 is approved, outside of the R-1, R-2, and R-0.4 zones, the moratorium would only apply to subdivisions.