

## **ORDINANCE NO. 2018-09**

**AN ORDINANCE** of the City of Bainbridge Island, Washington, adopted pursuant to RCW 35A.63.220 and RCW 36.70A.390; amending Section 3 and Section 5 of Ordinance No. 2018-05 to amend the activities subject to the moratorium and to clarify exclusions to the moratorium; providing for severability; and leaving the effective date and duration of the moratorium unchanged.

**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 partly 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 received additional feedback and comment from individuals related to the moratorium and, based partly on that feedback, the Council determined that further amendment was necessary to clarify which types of activities are subject to the moratorium, and which activities are excluded from the moratorium; and

**WHEREAS**, on February 15, 2018, the Council enacted Ordinance No. 2018-05, which amended and restated Ordinance No. 2018-02 and Ordinance No. 2018-03; and

**WHEREAS**, based on additional information and consideration related to educational facilities and preschools, as well as related to the applicability of the moratorium in the Mixed Use Town Center/Central Core Overlay District, on February 27, 2018, the Council passed two motions directing staff to prepare amendments to Ordinance No. 2018-05 to further clarify which types of activities are subject to the moratorium, and which activities are excluded from the moratorium, and those revisions have been incorporated into this new ordinance; 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 the public emergency on which this moratorium was imposed continues to exist and this ordinance does not change the basis for that declaration of emergency nor the effective date of the moratorium, which is January 9, 2018.

**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 additional and supplemental findings of fact to the City Council's initial findings of fact in support of the moratorium, as established by Ordinance Nos. 2018-02, 2018-03, and 2018-05.

**Section 2. Moratorium Amended.** Section 3 of Ordinance No. 2018-05 is hereby amended as follows related to the activities to which the moratorium applies:

- C. Major Site Plan and Design Review and Major Conditional Use Permit proposals that are not otherwise subject to this moratorium and that did not, before the effective date of the moratorium, have a pre-application conference on the Planning Department's calendar. Provided, that the moratorium does not apply to Major Site Plan and Design Review and Major Conditional Use Permit proposals for properties located in the Mixed Use Town Center/Central Core Overlay District.

**Section 3. Moratorium Amended.** Section 5 of Ordinance No. 2018-05 is hereby amended as follows related to exclusions to the moratorium:

- B. Permits and approvals for government facilities and structures; ~~private vocational training institutions, preschools, K-12, and higher education facilities~~ educational facilities and preschools; wireless communication facilities; and emergency medical and disaster relief facilities.

**Section 4. 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 5. No Change to Basis for Declaration of Emergency; Effective Date; Duration.** This ordinance shall take effect and be in force five (5) days from and after its passage and publication as required by law. Provided, that this ordinance is not intended to change the basis of the emergency declarations stated in the three moratorium ordinances which preceded this ordinance, Ordinance Nos. 2018-02, 2018-03, and 2018-05. Pursuant to *Matson v. Clark County Board of Commissioners*, 79 Wn. App. 641 (1995), non-exhaustive underlying facts necessary to support the emergency declarations adopted as part of the enactment of this moratorium were included in the "Whereas" clauses of Ordinance No. 2018-02 and Ordinance No. 2018-03, and were restated and supplemented in Ordinance No. 2018-05, as well as in this ordinance, and those "Whereas" clauses are adopted as findings of fact. This ordinance amending the moratorium 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. 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 March, 2018.

APPROVED by the Mayor this \_\_\_\_ day of March, 2018.

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Kol Medina, Mayor

ATTEST/AUTHENTICATE:

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Christine Brown, City Clerk

FILED WITH THE CITY CLERK	March 9, 2018
PASSED BY THE CITY COUNCIL	March __, 2018
PUBLISHED:	March __, 2018
EFFECTIVE DATE:	March __, 2018
ORDINANCE NO:	2018-09