

ORDINANCE NO. 2018-23

AN ORDINANCE of the City of Bainbridge Island, Washington, adopted pursuant to RCW 35A.63.220 and RCW 36.70A.390; amending Ordinance No. 2018-14, leaving the effective date of the moratorium unchanged; and extending the moratorium for an additional 90 days.

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 March 13, 2018, the Council approved Ordinance No. 2018-09 to further clarify which types of activities are subject to the moratorium, and which activities are excluded from the moratorium; and

WHEREAS, this moratorium was imposed, in part, to allow the Council and City staff adequate time to complete the Critical Areas Ordinance Update process, and to address the Council's concerns about the City's development review process, standards, and guidelines, as well as regarding affordable housing related issues; and

WHEREAS, the Council adopted the Critical Areas Ordinance Update (Ordinance No. 2018-01) on February 27, 2018, and the updated Critical Areas Ordinance took effect on April 23, 2018; and

WHEREAS, critical areas within the City's shoreline jurisdiction are regulated by the City's shoreline master program (see, e.g., Chapter 16.12 BIMC, RCW 36.70A.480(3)(b)); and

WHEREAS, integration of applicable critical areas regulations into the shoreline master program is essential to ensuring adequate protection of critical areas within the shoreline jurisdiction and no net loss of shoreline ecological functions; and

WHEREAS, regulations for critical areas within the City's shoreline jurisdiction are in the process of being updated through an amendment of the City's shoreline master program consistent with the Shoreline Management Act and, at this time, that amendment process is not expected to be complete before July 9, 2018, which is the date that the moratorium is currently set to expire; and

WHEREAS, the City Council approved Ordinance 2014-14 on April 24, 2018, amending the development moratorium in order to have the provisions of Section 3.B. only apply within the City's shoreline jurisdiction areas (Chapter 16.12 BIMC); and

WHEREAS, a number of moratorium priorities were identified at a joint meeting of the City's Design Review Board and Planning Commission on February 22, 2018, including the following:

- (1) Revise review procedures for preliminary subdivisions to include the Design Review Board and Planning Commission in process; and
- (2) Analyze alternatives to decision-making authority for the Design Review Board, Planning Commission, and Hearing Examiner for subdivisions, conditional use permits, and site plan and design review; and
- (3) Identify specific development standards to review/revise in Chapters 18.12 and 18.15 of the Bainbridge Island Municipal Code; and
- (4) Initiate rewrite of subdivision design standards in Chapter 17.12 of the Bainbridge Island Municipal Code; and

WHEREAS, at the April 3, 2018, City Council study session, the City's Department of Planning and Community Development provided a briefing on the Design Review Board and Planning Commission joint meeting wherein the City Council authorized staff to proceed with a work plan addressing the priorities identified at the joint meeting; and

WHEREAS, on May 7 and 21 and on June 4, 2018, the City's Design Review Board discussed alternatives for revisions to the City's subdivision standards, dimensional standards, and land use review procedures; and

WHEREAS, on May 10 and 24, June 7, and June 14, 2018, the City's Planning Commission discussed alternatives for revisions to the City's subdivision standards, dimensional standards, and land use review procedures; and

WHEREAS, on June 21, 2018, the City's Planning Commission expects to complete its review of revisions to the City's subdivision standards, dimensional standards, and land use review procedures and forward recommendations on these issues to the City Council; and

WHEREAS, City staff is working with the Design Review Board on a scope of services to solicit professional services to update the City's Design Guidelines (BIMC 18.18.030), which is work that is not expected to be completed until the end of 2018, and;

WHEREAS, each of the multiple Design Review Board and Planning Commission meetings as described above included an opportunity for public comment on the alternatives for revisions to the City's subdivision standards, dimensional standards, and land use review procedures; and

WHEREAS, the City provided legal background on the roles of land use bodies, presented in a memorandum from attorney James E. Haney (outside legal counsel for the City) entitled, "*Roles of City Council, Planning Commission, Design Review Board, and Hearing Examiner in Land Use Permits*," dated June 1, 2018; and

WHEREAS, the Affordable Housing Task Force has been meeting monthly and recently met to review its draft final report for the City Council and expects to have a final report issued in mid-July, 2018; and

WHEREAS, on June 12, 2018, the City Council authorized the execution of a professional services agreement to conduct an economic market analysis and feasibility study regarding a new inclusionary zoning program and updates to the City's Transfer of Development Rights program, both of which address affordable housing related issues; and

WHEREAS, on February 27, 2018, the City Council was provided with a moratorium work program; and

WHEREAS, on April 10, May 22, June 5, and June 19, 2018, the City Council was provided moratorium work program status report updates; and

WHEREAS, the City Council held a public hearing on June 26, 2018, related to extending the development moratorium; 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, except as described above, 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, 2018-05, 2018-09 and 2018-14.

Section 2. Moratorium Amended. The moratorium is hereby amended, as also stated in Section 5 below, to extend the moratorium for ninety (90) days beyond the current six month duration of the moratorium, which, without this amendment, would expire on July 9, 2018.

Section 3. Moratorium Work Plan. As provided for under RCW 35A.63.220 and RCW 36.70A.390, the City may renew a moratorium for one or more six-month periods if a work plan has been developed, a public hearing has been held, and findings of fact have been made, and the City is hereby extending the moratorium as described herein based on the work plan that has been developed and the findings of fact that have been made in this ordinance and the previous ordinances related to this moratorium.

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 and Effective Date; Extension to 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 five moratorium ordinances which preceded this ordinance, Ordinance Nos. 2018-02, 2018-03, 2018-05, 2018-09, and 2018-14, except as described in the "Whereas" clauses of this ordinance. 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, Ordinance No. 2018-09, and Ordinance No. 2018-14, as well as in this ordinance, and those "Whereas" clauses are adopted as findings of fact. This ordinance amending the moratorium shall extend the current six month moratorium for an additional ninety (90) days, 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 June, 2018.

APPROVED by the Mayor this ____ day of June, 2018.

Kol Medina, Mayor

ATTEST/AUTHENTICATE:

Christine Brown, City Clerk

FILED WITH THE CITY CLERK	June 15, 2018
PASSED BY THE CITY COUNCIL	_____, 2018
PUBLISHED:	_____, 2018
EFFECTIVE DATE:	_____, 2018
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