

ORDINANCE NO. 2018-25

AN ORDINANCE of the City of Bainbridge Island, Washington, adopted pursuant to RCW 36.70A.390; imposing an interim official control in the form of a new chapter to Title 16 of the Bainbridge Island Municipal Code related to the preservation, protection, and retention of Landmark Trees located on Bainbridge Island; specifying criteria for identification of Landmark Trees; stating the effect on vested rights; recognizing that a public hearing will be held within 60 days; authorizing interpretative authority; providing for severability; declaring an emergency; 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 interim official controls 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, land clearing and development activities have resulted in the removal and loss of Landmark Trees on Bainbridge Island; and

WHEREAS, Landmark Trees, because of their age, size, and condition are recognized as having exceptional value in contributing to the character of the community; and

WHEREAS, the City has received numerous public comments expressing concern regarding the loss of Landmark Trees on Bainbridge Island; and

WHEREAS, the Planning Commission, Design Review Board, and the Ad Hoc Tree/LID Committee have expressed concern regarding the loss of trees on Bainbridge Island; and

WHEREAS, the preservation of trees is a community value supported by the policies and goals of 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 interim official control 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 interim official control to become effective immediately upon adoption.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BAINBRIDGE ISLAND, WASHINGTON, DOES HEREBY 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 interim official control 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. Interim Official Control Imposed. A new Chapter 16.32 is added to Title 16 of the Bainbridge Island Municipal Code, to read as follows:

Chapter 16.32 Protection of Landmark Trees

16.32.010 Definitions

- A. "City Attorney" means the city attorney of the City of Bainbridge Island, or their designee.
- B. "Diameter Breast Height" means the diameter of a tree measured at 4.5 feet above the ground on the uphill side of the tree.
- C. "Landmark Trees" means trees, located on Bainbridge Island, that are unique because of their age, size, species, historical significance, or aesthetic quality and meet the criteria established by this chapter.
- D. "Planning Director" means the director of the Planning and Community Development Department of the City of Bainbridge Island, or their designee.
- E. "Replacement Tree" means a tree that is of a species native and indigenous to the site where a Landmark Tree was removed and is a minimum size of six feet in height measured from top of the root flare, with a minimum trunk diameter of one inch measured at four inches above the top of the root flare for both evergreen and deciduous trees.
- F. "Size" means the diameter breast height of a tree.

16.32.020 Landmark Tree Criteria.

Landmark Trees are trees that meet the following criteria for their species:

Species	Size (Greater than or equal to)
Birch (<i>Betula papyrifera</i>)	30"
Beech (<i>Fagus grandifolia</i>)	36"
Catalpa (<i>Catalpa speciosa</i>)	36"
American Elm (<i>Ulmus americana</i>)	30"
Douglas Fir (<i>Pseudotsuga menzesii</i>)	40"
Grand Fir (<i>Abies grandis</i>)	40"
Horsechestnut (<i>Aesculus hippocastanum</i>)	40"
Western Hemlock (<i>Tsuga heterophylla</i>)	30"
Black locust (<i>Robinia pseudoacacia</i>)	30"
Lombardy poplar (<i>Populus nigra</i>)	38"
Pacific Madrone (<i>Arbutus menzesii</i>)	24"
Bigleaf Maple (<i>Acer macrophyllum</i>)	36"
Silver maple (<i>Acer saccharinum</i>)	36"
Monkey Puzzle tree (<i>Araucaria araucana</i>)	36"
Monterey pine (<i>Pinus radiata</i>)	30"
Oregon White Oak (<i>Quercus garryana</i>)	30"
Pin Oak (<i>Quercus palustris</i>)	30"
Red Oak (<i>Quercus rubra</i>)	38"
Ponderosa pine (<i>Pinus ponderosa</i>)	30"
Western White pine (<i>Pinus monticola</i>)	30"
Sitka Spruce (<i>Picea sitchensis</i>)	36"
Sycamore (<i>Platanus occidentalis</i>)	36"
English walnut (<i>Juglans regia</i>)	30"
Western Red Cedar (<i>Thuja plicata</i>)	30"

Coast Redwood (<i>Sequoia sempervirens</i>)	30"
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16.32.030 Landmark Tree Retention.

- A. Except as otherwise allowed under this chapter, no person, corporation, or other legal entity shall remove a Landmark Tree without having obtained approval from the City Council.
- B. Prior to the removal of a Landmark Tree, any person, corporation, or other legal entity seeking to remove a Landmark Tree must submit an Application for Removal of a Landmark Tree to the Planning Director.
- C. Upon receipt of an Application for Removal of a Landmark Tree, the Planning Director will prepare a written recommendation on the removal for the City Council.
- D. Within sixty (60) days following the receipt by the Planning Director of an Application for Removal of a Landmark Tree, the City Council will hold a public hearing on the proposed removal.
- E. Following the public hearing and receipt of the Planning Director's recommendation, the City Council shall approve the removal, deny the removal, or request additional information. The City Council shall only approve the removal of a Landmark Tree upon a finding that at least one of the following criteria is met:
 1. The removal is necessary to enable construction on or reasonable use of the property, and no other alternative is feasible; or
 2. The removal is necessary to maintain utilities, access, or fulfill the terms of an easement or covenant recorded prior to the adoption of the ordinance codified in this chapter; or
 3. The tree is diseased, dead, or otherwise determined to be a hazardous tree as determined by a qualified professional pursuant to BIMC 18.15.010.C.1.c.
- F. If the City Council grants an application for removal of a Landmark Tree upon a finding that the removal is necessary to enable construction on or reasonable use of the property, and no other alternative is feasible, then the property owner that submitted the application shall be required to provide mitigation through the planting of Replacement Trees on the property from which the Landmark Tree was removed in accordance with the following:

1. The quantity of Replacement Trees is calculated by multiplying the diameter breast height of the subject Landmark Tree by fifty percent (50%) to establish the number of replacement inches; and
 2. The total number of replacement trees is determined by the total caliper inches of Replacement Trees equaling or exceeding the required tree replacement inches established in subsections (F)(1) of this section.
- G. In lieu of planting the Replacement Trees prescribed in subsection (F) of this section, an applicant may satisfy the tree replacement requirements by:
1. Planting at least three Replacement Trees on the property from which the Landmark Tree was removed; and
 2. Contributing to the Bainbridge Island Tree Fund at a rate of \$500.00 per each replacement inch not accounted for in the planting of Replacement Trees; and
 3. The sum of the tree replacement inches accounted for by contributing to the Bainbridge Island Tree Fund and the total caliper inches of the replacement trees planted shall not be less than the total replacement inches calculated in subsection (F) of this section.

16.32.040 Emergencies.

- A. In emergency situations involving immediate danger to life or real property, removal of a Landmark Tree is permitted without first obtaining approval from the City Council; Provided, that the following conditions are satisfied:
1. The person, corporation, or other legal entity that removed the Landmark Tree submits an Application for Removal of a Landmark Tree under this chapter within fourteen (14) days after the emergency situation is stabilized; and
 2. The person, corporation, or other legal entity that removed the Landmark Tree provides, within fourteen (14) days after the emergency situation is stabilized, the city with documentation establishing the existence of the emergency situation, with such documentation including at least four high resolution photographs evidencing the existence of the emergency situation; and
 3. The City Council subsequently approves the removal pursuant to this chapter.
- B. If the conditions of subsection (A) of this section are not satisfied, the person, corporation, or other legal entity that removed the Landmark Tree without first obtaining approval from the City Council will be in violation of this chapter.

16.32.050 Appeals.

- A. The City Council's decision on an application for removal of a Landmark Tree may be appealed to the Kitsap County Superior Court in accordance with Chapter 36.70C RCW.
- B. All appeals must be filed within twenty-one (21) days following the issuance of the City Council's decision on the application.

16.32.060 Violations and Penalties.

- A. This chapter shall be enforced, and penalties for violations of this chapter will be imposed, pursuant to Chapter 1.26 BIMC, except that no Notice of Infraction may be issued under Chapter 1.26 BIMC for a violation of this chapter.
- B. In addition to the civil penalties imposed under BIMC 1.26.090, an additional civil penalty will be imposed on any person, corporation, or other legal entity that removes a Landmark Tree without prior approval of the City Council. This additional civil penalty will be in the amount of \$25,000 for each Landmark Tree removed. The City Attorney will take appropriate action to collect this additional civil penalty.
- C. In the event of a conflict between the requirements of this chapter and any other requirement of the Bainbridge Island Municipal Code, this chapter will govern and control.

Section 3. Effect on Vested Rights. The interim official control imposed under Section 2 of this ordinance shall apply prospectively only. 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 5. Public Hearing. Pursuant to 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 interim official control 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 interim official control 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 _____ day of _____, 2018.

APPROVED BY THE MAYOR this _____ day of _____, 2018.

Kol Medina, Mayor

ATTEST/AUTHENTICATE:

Christine Brown, City Clerk

FILED WITH THE CITY CLERK: June 22, 2018

PASSED BY THE CITY COUNCIL:

PUBLISHED:

EFFECTIVE DATE:

ORDINANCE NUMBER: 2018-25