
CALL TO ORDER – Call to Order, Agenda Review, Conflict Disclosure
PUBLIC COMMENT – Accept public comment on off agenda items
WALLACE COTTAGES SUBDIVISION PLN50589 SUB
MORATORIUM WORK PLAN/NEXT STEPS – ORD. 2018-05
NEW/OLD BUSINESS
ADJOURN

CALL TO ORDER – Call to Order, Agenda Review, Conflict Disclosure

Chair J. Mack Pearl called the meeting to order at 7:09 PM. Planning Commissioners in attendance were Jon Quitslund, William Chester, Michael Killion and Kimberly McCormick Osmond. Commissioners Lisa Macchio and Don Doman were absent. City Staff present were Planning Director Gary Christensen, Associate Planner Kelly Tayara and Permit Specialist Lara Lant who monitored recording and prepared minutes.

The agenda was reviewed. There were not any conflicts disclosed.

PUBLIC COMMENT – Accept public comment on off agenda items

Brian Lindgren, Citizen - Mr. Lindgren owns a shy-acre lot on Shasta Lane in the R-1 zone. It has no critical areas but is covered in natural vegetation. Under the draft Critical Areas Ordinance (CAO), use of heavy equipment and removal of trees is prohibited. He requested the Planning Commissioners amend the draft. Chair Pearl noted the draft Critical Areas Ordinance was under review by City Council at this time.

WALLACE COTTAGES SUBDIVISION PLN50589 SUB

The project was summarized by Commissioner Quitslund and statements were read by Commissioners McCormick Osmond and Chester (see attached.) David Smith, representing Wallace Cottages, asked to address the Planning Commission. Chair Mack Pearl allowed Mr. Smith to speak and he gave a passionate response to the Commission's review of the project. Chair Pearl interrupted Mr. Smith's response and asked the Commission to table further project discussion because of the heated nature of Mr. Smith's response. Director Christensen recommended the Planning Commission conclude deliberations and form a recommendation to send to the Hearing Examiner.

Motion: I move to deny the Wallace Cottages project as a HDDP because it is not consistent with the Comprehensive Plan and does not meet the goals and purposes of the HDDP, including traffic impacts, public safety impacts on surrounding neighborhoods resulting from the proposed traffic access via Wallace Way to Grow Avenue, tree retention issues and feasibility of open space.

Chester/Killion: Passed Unanimously.

MORATORIUM WORK PLAN/NEXT STEPS – ORD. 2018-05

Director Christensen handed out copies of the updated February 15, 2018 Six-Month Temporary Building Moratorium to the Commissioners (attached). The Commissioners and Director Christensen discussed next steps to begin dialogue regarding issues addressed in the Moratorium, including design review standards. Director Christensen ended the conversation by giving the Commissioners a 2018 Planning Commission Project Schedule (attached).

NEW/OLD BUSINESS

None.

ADJOURN

The meeting was adjourned at 9:08 PM.

Approved by:


J. Mack Pearl, Chair


Lara Lant, Permit Specialist

[illegible]

Wallace Cottages HDDP Project
Neighborhood Impacts and Comprehensive Plan Consistency
Planning Commission Meeting – February 22, 2018
Commissioner Kim McCormick Osmond

Access to the Wallace Cottages project is proposed by extending Wallace Way west from the Wallace Cottages site to Grow Avenue. The traffic study estimated 181 trips per day (ADT) would be generated from the 19 houses proposed. The small Nakata neighborhood community exists west of the project, with Taurnic Place intersecting with Wallace Way from the south and Nakata Avenue intersecting with Wallace Way to the north. Because Nakata Avenue intersects with Grow Avenue via Island Way, Wallace Cottages residents could use Nakata Avenue as a “cut through” road to access Grow Avenue.

Access for Wallace Cottages has been an unsettled issue since the project was initially considered by the Design Review Board (DRB) on November 21, 2016. At that time, the project applicant stated that they were working with adjacent property owners to provide vehicular circulation and ingress/egress to the neighborhood. Neighbors expressed concern that extending Wallace Way to Grow Avenue as access for the project would impact the quality of the Nakata and Taurnic Place neighborhoods.

On December 19, 2016, the project was again before the DRB, when it was determined that the project applicant still had to resolve property line, right of way, easement and access issues. Neighbors at that time expressed opposition to extending Wallace Way from Grow Avenue to Madison Avenue. On March 6, 2017, the DRB again considered the project, with neighbors opposing a connection via Wallace Way between Grow Avenue and Madison Avenue, thereby requiring traffic from a high density development to flow through low density neighborhoods onto Grow Avenue, a secondary road. The DRB chair then recommended access to the project from Madison Avenue, without a through connection to Grow Avenue. It was also noted at that meeting that 5 projects were proposed for construction between Madison Avenue and Nakata Avenue, with discussion about reviewing the projects cumulatively to ensure traffic impacts were properly understood and addressed. It was also recommended that the impact of HDDP developments on surrounding neighborhoods be evaluated.

Consistency with the Comprehensive Plan

The Comprehensive Plan goals and policies seek to protect neighborhoods from the impacts of cut-through vehicle traffic. One of the purposes and goals of the HDDP process is **“to promote compact, low-impact development where it is most appropriate.”** While such development is certainly most appropriate within the area served by Winslow’s water and sewer system, it is not necessarily appropriate in all parts of Winslow. Appropriateness must be guided by the policies and goals of the Comprehensive Plan, which includes a Neighborhoods element with the following Goal and Policies:

GOAL TR-8

Consider the special needs of *neighborhood* safety, pedestrian and bicycle facilities, *transit* use and facilities and traffic flow in the development of transportation improvements that affect *neighborhoods*.

Policy TR 8.1

Protect residential *neighborhoods* from the impacts of cut-through motor vehicle traffic by providing appropriate connecting routes and applying appropriate traffic-calming measures to control vehicle volumes while maintaining emergency vehicle response times.

Policy TR 8.3

Develop a circulation and access management plan for *neighborhoods* and neighborhood centers so that as properties develop, vehicular and non-motorized connectivity and circulation are maintained.

The January 19, 2018 City Staff Report includes a public comment describing the Nakata Avenue neighborhood as “reminiscent of the 1950s with children playing in the street, be it catch, hopscotch, Frisbee, 4-square and other games, moving out of the way when cars need to go by, often waving to friends’ parents as they drive by. The neighborhood design functions perfectly. There are no speed bumps or other traffic-slowing retrofits, or signs asking drivers to slow down because they are not needed. The design of the neighborhood lends itself to driving slowly.” The Staff Report indicates this comment “captures the sentiment of the many comments received from the neighborhood.”

The Staff Report further documents neighborhood concerns about increasing traffic on Grow Avenue, noting that Grow Avenue does not currently provide for the traffic it has, especially regarding children walking or riding bikes to school, and does not have fog lanes or bike lanes. Grow Avenue connects to High School Road to the north, which provides walking/biking access to Bainbridge High School, Commodore and Ordway Elementary School. Routing traffic to the north on Grow Avenue also sends it directly into the Bainbridge High School school zone, thereby encouraging vehicles seeking access to the north to travel on Ihland Way to Lovell Street to bypass the school zone.

Proposing to route 181 ADTs per day from Wallace Cottages through the established adjoining neighborhood via Wallace Way and Nakata Avenue via Ihland Way and onto Grow Avenue is not consistent with Goal TR-8 or Policy TR 8.1 or TR 8.3. This is particularly apparent in light of the 5 other projects that currently are being proposed for development between Madison Avenue and Nakata Avenue. An access to and from Madison Avenue that serves all 5 projects without cutting through established neighborhoods is consistent with the Comprehensive Plan and also satisfies the HDDP goal of limiting environmental impacts.

Public Safety Concerns

BIMC subdivision standards require compliance with RCW Title 58 provisions for public health, safety and general and public use and interest. Under RCW 58.17.110, a proposed subdivision shall not be approved unless the City makes written findings that: (a) **Appropriate provisions are made for the public health, safety, and general welfare** and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) **the public use and interest will be served by the platting of such subdivision and dedication** (emphasis added).

As City staff has explained, there is no development standard, code, or unit of measure that the City can use to objectively evaluate changes to a neighborhood’s character caused by increased traffic. There is no bright line that delineates acceptable changes from unacceptable changes. While the traffic study may determine whether a LOS has been adversely affected by a proposed project, it cannot conclude whether adverse impacts to a neighborhood resulting from increased traffic, including impacts to public safety, are acceptable and consistent with the Comprehensive Plan.

Given the significant traffic and public safety impacts that are posed by an estimated 181 daily traffic trips through the Nakata neighborhood to Grow Avenue via Wallace Way, Nakata Avenue and Ihland Way, in comparison to the relatively small public benefit of only 2 affordable housing units but an increase in allowable density from 10 to 19 homes, it does not appear that these requirements are satisfied for approval of the Wallace Cottages project as a subdivision utilizing the HDDP process.

Recommendations

1. Approve the Wallace Cottages project as a HDDP, provided that vehicle access is from Madison Avenue to the project site and does not connect to Grow Avenue via Wallace Way, Nakata Avenue or Ihland Way.
2. Deny the Wallace Cottages project as a HDDP because it is not consistent with the Comprehensive Plan and does not meet the goals and purposes of the HDDP, including traffic impacts and public safety impacts on surrounding neighborhoods resulting from the proposed traffic access via Wallace Way to Grow Avenue. The Wallace Cottages project should be evaluated cumulatively with the other projects being proposed for construction between Madison Avenue and Nakata Avenue, to ensure traffic and public safety impacts are properly understood and addressed. The impact on surrounding neighborhoods of the Wallace Cottages project and the other proposed projects should be evaluated.

HDDP Quantitative Evaluation:

1. The landscape plan revised on 2/15/18 from the original dated 1/30/17 conflicts with the Preliminary Plat Drawings. This should be resolved prior to any approval
 - a. The duplexes on the revised landscape plan are moved away from the west property line. Perhaps to avoid a conflict with neighbor to the west?
 - b. Additional potentially impervious surface is shown for the driveway and or parking to the affordable units.
 - c. The south end open space shows 3 parking spaces instead of a hammer head turn around shown on the Preliminary Plat drawings.
 - d. The pea patch seems to be in the retained tree area which would impair or negate its function.
2. The HDDP tier 2 requirements for site and building quantitative evaluation should produce a minimum 25 points for the site and 12 for buildings. While the city has awarded the required number. I find that at least some of the evaluation credits are based on written conditions and are not planned for in drawings. Considering that the density allowed under HDDP tier 2 is double it does not seem unreasonable that the developer should provide complete graphic representation of planned amenities that would be credited in the Quantitative Evaluation to provide a complete representation of the intent and innovation of the project to the City of Bainbridge Island, Planning Commission and Hearing Examiner. Without such documentation, I do not feel the points should be awarded. The items of concern are:
 - a. Private yard turf needs to be shown on the landscape plan. 4 points
 - b. Landscape plan needs to show the location and type of Native or drought tolerant plantings 4 points
 - c. Vehicular Charging stations locations and access 3 points
 - d. Covered consolidated bike parking and access 3 points
3. The points for open space can receive a score 6 or 8 if the space is public. The Developer has indicated that the playground and pea patch could be public as it could be shared with the neighbors to the west. That seems rather questionable considering the size of the gardens and play ground and the conflict of all the uses in that area including housing, tree retention, access, playground, and pea patch. Also, public it would seem, should include everyone wanting to use the facilities which may require additional parking. The area would seem more deserving of a 6-point evaluation.
4. Without the all these points the project to date fails on points at 15 total for innovative site development.

2018 Planning Commission Project Schedule

PROJECT	FEBRUARY	MARCH		APRIL			MAY		STAFF
	22	8	22	12	18	26	10	24	
Wallace Cottages HDDP SUB	R		JOINT MEETING WITH DESIGN REVIEW BOARD		ISLAND CENTER PUBLIC MEETING (NOT A PC MEETING)				Kelly Tayara
Moratorium & Work Program	B								Gary Christensen
General SMP Amendment Phase 1		SS		SS					Christy Carr
Business/Industrial Ord.		SS		SS		PH/R			Jennifer Sutton
Tree Regulations Amending BIMC 16.18 (Pending CAO being finished)				SS		PH/R			Jennifer Sutton
Wyatt Apts. SPR				PM		R			Kelly Tayara
Madison Place HDDP SUB							PM	R	Kelly Tayara
SMP Amendment Phase 2						SS	SS	SS	Christy Carr
Ericksen Garden HDDP SPT								PM	Kelly Tayara

PACKETS DUE FRIDAY BEFORE MEETING

SS = Study Session W = Workshop PH = Public Hearing PM = Public Meeting R = Recommendation
 A = Action P = Process B = Briefing D = Decision JM = Joint Meeting OH = Open House

UPDATED FEBRUARY 15, 2018

Six-Month Temporary Building Moratorium

The City Council passed Ordinance Nos. 2018-02 and 2018-03 declaring a temporary six-month moratorium on the acceptance of certain development applications, with specified exclusions. On February 15, 2018, the Council enacted Ordinance No. 2018-05 amending the previous ordinances by restating those ordinances, except with regard to the effective date and duration provisions of the moratorium. Also, Ordinance No. 2018-05 does not change the basis for the declaration of emergency that was included in Ordinance No. 2018-02 and Ordinance No. 2018-03. The moratorium continues to have an effective date of January 9, 2018.

In enacting this six-month moratorium, the Council's stated its intention to have additional time to review regulations and policies to ensure the vision, guiding principles, goals, and policies of the City's Comprehensive Plan are being met to the Council's satisfaction.

Ordinance No. 2018-05, Section 3, prohibits:

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, R-0.4, and Business/Industrial 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, R-0.4, and Business/Industrial 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.

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.

Ordinance No. 2018-05, Section 5 (Exclusions) states that the moratorium does not apply 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, and

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.

The moratorium does not apply to building or land use applications that are already vested.

Key concerns expressed by the Council in adopting the moratorium are the Council's ongoing consideration of the Critical Areas Ordinance (CAO) Update, the urgent need to address affordable housing issues, and analyze design review standards and guidelines and long subdivision review process. Given the significance of the update to those regulations, the Council expressed a need for a temporary "timeout" to allow for additional public outreach in determining how best to protect the Island's unique environment.

Contact Us

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Director

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Planning Counter Hours

Monday, Tuesday, Friday

8 a.m. - 4 p.m.

Wednesday & Thursday

8 a.m. - Noon

Or by Appointment

Development Engineer

Counter Hours

Monday, Wednesday, Friday

8:30 a.m. - 10:00 a.m.

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Related Meetings

The City Council held a Special Meeting on Thursday, February 15, 2018 from 6:30 pm to 8:00 pm to further consider moratorium Ordinance No. 2018-05.

A Public Hearing was held at a City Council meeting on **Tuesday, February 13** during the regular City Council meeting beginning at 7:00 p.m.

The City Council conducted a February 6, 2018 Study Session to further discuss the implementation of the moratorium. The agenda for that meeting is available at **City Council Agendas**.

Links of the January 9, 2018 City Council meeting and other City Council meetings, agendas, and minutes are located at **City Council Agendas**.

Background and Supporting Documents

Ordinance No. 2018-05 - Passed February 15, 2018 (Effective 02/28/18)

Draft Moratorium Revision - Discussed at Feb. 6 Work Study (Not adopted)

Moratorium Handout - Updated January 22, 2018

Ordinance 2018-03 - Passed January 16, 2018

Ordinance 2018-02 - Passed January 9, 2018

Land Use Procedures Summary Table (BIMC 2.16.010)

Revised Code of Washington State (RCW) Section 36.70A.390 Moratoria

Municipal Research and Services Center (MRSC) – Topic: Development Permit Vested Rights

News Media and Publications

KING5 News – COBI Moratorium Article 011618

KOMO News – COBI Moratorium Article 01162018

Kitsap Sun – COBI Moratorium Article 011518

Bainbridge Island Review – COBI Moratorium Article 011218

Comments and Questions

Public participation is invited throughout the Moratorium process. Check this page for updated information, timelines, draft documents and meeting notices. You may also join an email listserv to receive timely project notifications: [Notify Me](#)

For more information on how the moratorium may impact your project, stop by the Planning and Community Development Counter at City Hall, or email moratorium@bainbridgewa.gov.

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News Room

Bainbridge Island Imposes Temporary Six-Month Emergency Moratorium on Certain Development

The City Council passed Ordinance 2018-02, a temporary six-month moratorium on the acceptance of certain development applications, during their meeting on Tuesday, January 9.

[Additional Info...](#)

City Council Reconsiders Sound to Olympics Trail Bridge

The City Council voted during their January 9, 2018, Regular Business Meeting to reconsider their prior action to cancel the Sound to Olympics Trail Bridge Project.

[Additional Info...](#)

Go Behind the Scenes with the BIPD at the 2018 Citizens' Police Academy

Bainbridge Island residents can meet the men and women that protect the city, ride along with a police officer and experience what goes on behind the scenes at the Bainbridge Island Police Department's free Citizens' Police Academy coming up in February.

[Additional Info...](#)

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Calendar

Mon Jan. 22

[Intergovernmental Work Group \(IGWG\) Meeting](#)

[Read On](#)

Mon Jan. 22

[Climate Change Advisory Committee Special Meeting](#)

[Read On](#)

Mon Jan. 22

[Ethics Board Special Meeting](#)

[Read On](#)

Tue Jan. 23

[City Council Business Meeting](#)

[Read On](#)

Wed Jan. 24

[City Council Advance - Special City Council Meeting](#)

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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 has been held within 60 days of the enactment of the moratorium; authorizing interpretative authority; providing for severability; not changing the basis for the emergency declaration on which the moratorium was imposed and later amended; and leaving the effective date and the duration of the moratorium unchanged.

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 without immediate action by the Council 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 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 have received additional feedback and comment from individuals related to the moratorium and, based partly 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 instead be to simplify the moratorium by clearly stating what the moratorium applies to and to limit the exclusions; 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 effective date and duration provisions of the moratorium, such that the moratorium continues to have an effective date of January 9, 2018, and this ordinance doesn't change the basis for the declaration of emergency on which the moratorium was imposed; 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. 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, except with respect to the effective date and duration provisions of those ordinances regarding the moratorium, and related to the basis for the emergency declaration for the moratorium. To be clear, this ordinance does not change the basis for the declaration of emergency that was declared upon the imposition of this moratorium, and this ordinance 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 include and restate the City Council's findings of fact in support of the moratorium as stated in Ordinance No. 2018-02 and Ordinance No. 2018-03, and those findings are supplemented by additional findings of fact herein. The combined findings of fact as restated in this ordinance do not change the basis for the declaration of emergency that was initially declared upon the imposition of this 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 and 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, R-0.4, and Business/Industrial 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, R-0.4, and Business/Industrial 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.

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.

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 conducted a public hearing on this moratorium on February 13, 2018. The Council accepted public testimony as part of that public hearing and is adopting findings of fact as part of this ordinance, and those findings of fact are incorporated herein.

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 moratorium, including this ordinance amending and restating the moratorium, are exempt from the requirements of a threshold determination under the State Environmental Policy Act. This ordinance does not change the basis of the declaration of emergency that was declared upon the imposition of this moratorium.

Section 10. 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 of the two ordinances which this ordinance is amending and restating, Ordinance No. 2018-02 and Ordinance No. 2018-03, as stated in Section 1 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 have been restated and supplemented in this ordinance amending and restating the moratorium, and those "Whereas" clauses herein are adopted as findings of fact, as also described in Section 2 above. This ordinance amending and restating 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.

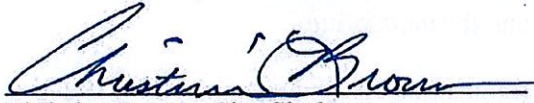
PASSED by the City Council this 15th day of February, 2018.

APPROVED by the Mayor this 15th day of February, 2018.



Kol Medina, Mayor

ATTEST/AUTHENTICATE:



Christine Brown, City Clerk

FILED WITH THE CITY CLERK
PASSED BY THE CITY COUNCIL
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO:

February 15, 2018
February 15, 2018
February 23, 2018
February 28, 2018
2018-05