



STUDY SESSION

TUESDAY, MAY 17, 2016

**LOCATION: BAINBRIDGE ISLAND CITY HALL
280 MADISON AVENUE N., BAINBRIDGE ISLAND, WASHINGTON**

AGENDA (TIMES LISTED ON THE AGENDA ARE APPROXIMATE)

1. CALL TO ORDER / ROLL CALL

7:00 PM

Mayor: Val Tollefson

Deputy Mayor: Sarah Blossom

Councilmembers: Kol Medina Michael Scott
Ron Peltier Roger Townsend
Wayne Roth

**2. ACCEPTANCE OR MODIFICATION OF AGENDA/ CONFLICT
OF INTEREST DISCLOSURE**

3. PUBLIC COMMENT ON AGENDA ITEMS

7:05 PM

4. CITY COUNCIL DISCUSSION

A. 7:15 PM Islandwood Property Non-Motorized Trail, AB 16-064 -
Council (Pg. 2)

B. 7:25 PM Initiative and Referendum Powers, AB 16-072 - Council (Pg.
3)

C. Summer Meeting Schedule, AB 16-073 - Council (Pg. 7)

5. FOR THE GOOD OF THE ORDER

8:05 PM

6. ADJOURNMENT

8:10 PM

City of Bainbridge Island City Council Agenda Bill



PROCESS INFORMATION

Subject: 7:15 PM Islandwood Property Non-Motorized Trail, AB 16-064 - Council (Pg. 2)	Date: 5/17/2016
Agenda Item: COUNCIL DISCUSSION	Bill No.: 16-064
Proposed By: City Council	Referrals(s):

BUDGET INFORMATION

Department: Executive	Fund:
Expenditure Req:	Budgeted? Budget Amend. Req?

REFERRALS/REVIEW

City Council Business Meeting: 4/26/2016	Recommendation:
City Manager:	Legal: Finance:

DESCRIPTION/BACKGROUND

At the April 26, 2016 Business Meeting, City Council discussed a proposal from the Bainbridge Island Metropolitan Parks District (BIMPRD) to allow BIMPRD to construct a trail segment on property owned by Islandwood, using a public access easement held by the City.

At that time, the City Council determined to schedule further discussion of the BIMPRD proposal at a later meeting.

RECOMMENDED ACTION/MOTION

City of Bainbridge Island City Council Agenda Bill



PROCESS INFORMATION

Subject: 7:25 PM Initiative and Referendum Powers, AB 16-072 - Council (Pg. 3)	Date: 5/17/2016
Agenda Item: COUNCIL DISCUSSION	Bill No.: 16-072
Proposed By: Councilmember Peltier	Referrals(s):

BUDGET INFORMATION

Department: Executive	Fund: General Fund	
Expenditure Req:	Budgeted? No	Budget Amend. Req? No

REFERRALS/REVIEW

:	Recommendation:	
City Manager: N/A	Legal: N/A	Finance: N/A

DESCRIPTION/BACKGROUND

See attachments.

RECOMMENDED ACTION/MOTION

Discussion and identification of next steps.

ATTACHMENTS:

Description	Type
❑ Initiative & Referendum Powers in Washington	Backup Material
❑ Initiative & Referendum Report	Backup Material

Initiative & Referendum Powers in Washington

Of the 281 cities in Washington, 62 have initiative and referendum powers. All ten first class cities have I/R powers and the only Commission form City, Shelton, has I/R powers. Second class cities and towns do not have I/R powers. There are 9 Second class cities and 69 towns in Washington. The majority of cities are Code Cities (192), which is the classification under which Bainbridge Island falls. Of the 192 Code Cities, 61 have adopted Initiative and Referendum powers.

In addition, Counties operating under the Charter form also have I/R powers. There are 7 Charter Counties that have adopted I/R powers. Commission form Counties, such as Kitsap, do not have I/R authority.

In the most simple terms, initiative and referendum powers can be described as granting power to the people to directly exercise authority to enact and repeal laws. However, initiative and referendum powers are not that simple because there are many restrictions in place, which limit the topics that are eligible for initiative or referendum. Only ordinances may be enacted by initiative or repealed by referendum. The powers of initiative and referendum are not applicable to any other type of legislative enactment by a city or county council, such as a motion, order, or resolution. The list of ordinances that are exempt from referendum contained in RCW 35A.11.090 is as follows:

- Ordinances initiated by petition;
- Ordinances providing for local improvement districts;
- Ordinances appropriating money;
- Ordinances providing for or approving collective bargaining;
- Ordinances providing for the compensation of or working conditions of city employees;
- Ordinances authorizing or repealing the levy of taxes.

In addition to the above statutory limitations, the courts in Washington have recognized other limitations on the use of the powers of initiative and referendum. Basically, the courts have recognized two tests to determine if an ordinance is beyond the scope of direct legislation by the people either through the exercise of the initiative power or the referendum power.

The first test is whether the underlying action is legislative or administrative in nature. If the action is administrative, then it is not subject to the power of initiative or referendum. If it is legislative, then it may be subject to initiative and referendum, depending upon the outcome of the second test.

The second test is whether the power is one that has been granted by the legislature to the legislative authority of a city or county or whether it is a power that has been granted to the corporate entity as a whole. If it is a power that has been granted to the legislative authority (city or county council), then it is not subject to the powers of initiative and referendum. If it is a power that has been granted to the city as a corporate entity, then it may be subject to initiative and referendum.

The courts in Washington have noted that the power of direct legislation by citizens is not an inherent power of the people. The right did not exist until granted by the state constitution in 1912. There is an inherent limitation on this right in that it only extends to matters legislative in character, as compared to administrative matters.

This, of course, raises the question of what is an administrative action and what is a legislative action. The courts have applied two tests in making this determination. First, actions relating to subjects of a permanent and general character are usually regarded as legislative matters, and actions taken on subjects of a temporary and special character are usually regarded as administrative matters. Second, the power to be exercised is legislative in nature if it prescribes a new policy or plan, whereas it is administrative in its nature if it merely pursues a plan already adopted by the legislative body or some power superior to it.

Even with these tests as guides, it may not always be clear whether a matter is legislative, and subject to initiative and referendum, or administrative. One way to help understand this test is to review some court cases in which the courts have characterized various actions as being either legislative or administrative in nature. Examples of administrative actions are:

- Fluoridation of the city water supply;
- Comprehensive street name ordinance;
- A site specific rezone amendment since it implements the zoning code or comprehensive plan.

The other test used by the courts to determine if an issue is subject to initiative or referendum is the distinction between a grant of authority by the state legislature to the city or county as a corporate entity or to its legislative authority (the city or county council). If the statutory grant of authority is to the city or county as a corporate entity, direct legislation by the people is permissible in the form of initiative or referendum. On the other hand, if the grant of power is to the legislative authority of the city or county, then initiative and referendum are prohibited.

As an example of how this determination is made, consider the issue of whether citizens may pass an initiative rezoning an area of a city. It is first necessary to determine if there is a specific statutory grant of power to rezone property to either the legislative body or to the city as a whole. There is such a grant of authority for code cities in RCW 35A.63.100 and for other classes of cities in RCW 35.63.080. These statutes provide the legislative body with the authority to divide the city into zones. Therefore, this power is not subject to the power of initiative. This is also the holding of the Washington State Supreme Court.

Another example of this determination is the question of whether the initiative process applies to a decision of whether a city should acquire and operate a water utility. Again, the first step is to determine if there is a specific statute that contains a grant of authority to the city as a whole or to the city council to operate a water utility. In this case, there is such a statutory grant in RCW 35.92.010. That statute indicates that a city or town may acquire and operate a water utility system. Therefore, the grant of authority is not limited to the city council but is a grant to the city as an entity. This issue then, because it is also not an administrative matter, would be subject to the initiative power.

City staff contacted the Cities in Washington with initiative and referendum powers to gather information about the number of petitions they have received, topics and status. The feedback received suggests that in these communities with initiative and referendum powers, the use of this form of direct legislation is rare. In addition, of the 12 petitions submitted over the past 10 years in this group of 18 cities, only 6 of the initiatives made it to the ballot. The six that did not make it to the ballot either failed to contain the required number of signatures or were determined to be a topic that was not eligible.

Cities that have Adopted the Powers of Initiative and Referendum

City	Petitions Submitted	Not placed on ballot – insufficient signatures	Not placed on ballot -unauthorized topic	Voters passed	Voters Rejected
Battle Ground ♦	0	0	0	0	0
Bonney Lake *♦	0	0	0	0	0
Des Moines*♦	1	0	1	0	0
Issaquah*♦	1	0	0	1	0
Lakewood ●	1	0	0	0	1
Longview ♦	2	0	1	1	0
Mercer Island*♦	0 (see note 1)	0	0	0	0
Mill Creek*♦	0	0	0	0	0
Mountlake Terrace*♦	0	0	0	0	0
Mukilteo *♦	1	0	0	1 (see note 2)	0
Port Angeles*♦	2	0	0	0	2
Rainier ♦	0	0	0	0	0
Shelton *♦	2	0	2	0	0
Shoreline ♦	1	1	0	0	0
Tumwater ♦	0	0	0	0	0
Walla Walla *♦	1	0	1	0	0
Wenatchee *♦	0	0	0	0	0
Woodinville♦	0	0	0	0	0
TOTALS	12	1	5	3	3

Note 1: In Mercer Island, a petition has been initiated and signatures are due by June 3, 2016.

Note 2: In Mukelteo, an initiative was passed by the voters and subsequently invalidated by the court.

*PEER CITY

♦CODE CITY

● NOT A CODE CITY

City of Bainbridge Island

City Council Agenda Bill



PROCESS INFORMATION

Subject: Summer Meeting Schedule, AB 16-073 - Council (Pg. 7)	Date: 5/17/2016
Agenda Item: COUNCIL DISCUSSION	Bill No.: 16-073
Proposed By: Council	Referrals(s):

BUDGET INFORMATION

Department: Council	Fund:	
Expenditure Req:	Budgeted?	Budget Amend. Req?

REFERRALS/REVIEW

:	Recommendation:	
City Manager:	Legal:	Finance:

DESCRIPTION/BACKGROUND

See attached calendar.

RECOMMENDED ACTION/MOTION

Discuss summer meeting schedule.

ATTACHMENTS:

Description	Type
☐ Summer Calendar	Backup Material

2016 PROPOSED COUNCIL CALENDAR ITEMS

Absences	Clerk	Department	Timing (min)	Study Session	Absences	Clerk	Department	Timing (min)	Business Meeting
	Kelly		15	7-Jun	Roz		Kelly	25	14-Jun
		FIN	30	Biennial Budget: Initial CIP Review					Executive Session: Review Qualifications of an Applicant for City Employment (30 min)
		FIN	30	Biennial Budget: Community Service Funding Discussion			PW	30	Wyatt Way Reconstruction Phase 1 Update
		FIN	30	Review and Affirm Cost Allocation Methodology			EXEC	15	Public Hearing: Ordinance No. 2016-10, Comcast Franchise Agreement (Conduct Public Hearing; Consider Approval)
		CC	30	Police Facility Discussion - Moved from 7/21			EXEC	10	Pollinator Improvement Project (Presentation)
			135				PCD	10	Public Hearing: Ordinance No. 2016-06, Revising Aquaculture Regulations as a Limited Amendment of the Shoreline Master Program (Conduct Public Hearing; Consider Approval)
							PCD	10	Ordinance Relating to the City's Building Codes and Regulations (Consider Forwarding to 6/28 Consent Agenda)
							PW	10	2016 Annual Road Striping Contract Award (Consider Forwarding to 6/28 Consent Agenda)
							PW	10	Groundwater Assessment PSA Amendment #1 (Consider Forwarding to 6/28 Consent Agenda)
							EXEC	5	Proclamation Declaring June 20-26, 2016 Pollinator Awareness Week (Consider Approval)
							FIN	CA	Ordinance No. 2016-09, Relating to 2015 Budget Carryforwards into 2016 (Consider Approval)
							FIN	CA	Ordinance No 2016-08, Related to Q1 2016 Budget Adjustments (Consider Approval)
							FIN	CA	Resolution No. 2016-10, Amending the Fee Schedule (Consider Approval)
							PCD	CA	Resolution No. 2016-15, Amendments to Planning Administrative Manual Regarding Submittal Requirements for Land Use Permits (Consider Approval)
							EXEC	CA	Resolution No. 2016-11, Concerning the Use of Neonicotinoid Pesticides in the City of Bainbridge Island (Consider Approval)
							EXEC	CA	Ordinance No. 2016-12, Repealing BIMC 13.70 and 13.72; Adoptin Procurement Procedure Manual (Consider Approval)
								125	

2016 PROPOSED COUNCIL CALENDAR ITEMS

[illegible]

2015 PROPOSED COUNCIL CALENDAR ITEMS

[illegible]

2016 PROPOSED COUNCIL CALENDAR ITEMS

[illegible]

2016 PROPOSED COUNCIL CALENDAR ITEMS

Absences	Clerk	Department	Timing (min)	Study Session		Absences	Clerk	Department	Timing (min)	Business Meeting
				30-Aug						
				5th week - no meeting						