

ORDINANCE NO. 2019-17

AN ORDINANCE of the City of Bainbridge Island, Washington, adopted pursuant to RCW 36.70A.390; amending the interim official control, codified as Chapter 16.32 of the Bainbridge Island Municipal Code; leaving the effective date of the interim official control unchanged; updating the work plan; narrowing the applicability of Chapter 16.32 to only the Winslow Master Plan Study Area; and extending the duration of the interim official control until December 26, 2019.

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, has been discussing how to best accommodate growth and development in both general and specific ways, and finds that there are likely to be adverse impacts on the City and its citizens unless the City acts immediately to preserve the status quo; and

WHEREAS, land clearing and development activities have resulted in the removal and loss of Landmark Trees on Bainbridge Island and the City has received numerous public comments expressing concern regarding the 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 Planning Commission, Design Review Board, and the Ad Hoc Tree/LID Committee have expressed concern regarding the loss of trees on Bainbridge Island and the preservation of trees is a community value supported by the policies and goals of the City’s Comprehensive Plan; and

WHEREAS, on June 26, 2018, the City Council adopted Ordinance No. 2018-25, which imposed an interim official control in the form of Chapter 16.32 BIMC, *Preservation of Landmark Trees*, which designates Landmark Trees based on size and species, requires a permit to remove any Landmark Tree, and imposes fines if a Landmark Tree is removed without a permit; and

WHEREAS, on August 14, 2018, the City Council held a public hearing on Ordinance No. 2018-25; and

WHEREAS, the City Council has previously amended the interim official control adopted by Ordinance No. 2018-25 on August 21, 2018 (via Ordinance No. 2018-32), October 9, 2018 (via Ordinance 2018-42), and on December 11, 2018 (via Ordinance 2018-45); and

WHEREAS, on October 16, 2018, the City Council authorized the City Manager to contract with a team of arborists to review and make recommendations on City regulations governing tree and vegetation removal, including Chapter 16.32 BIMC; and

WHEREAS, on November 27, 2018, the City Council first discussed Ordinance No. 2018-45; and

WHEREAS, in response to comments and input that City staff and the City Council received regarding implementation and application of the landmark tree regulations, including comments from many property owners and Puget Sound Energy about difficulty in meeting the requirements of the regulations, City staff proposed amendments to the regulations to add exceptions for the type of landmark tree removal that would be approved through permit review; and

WHEREAS, in response to that input, on December 11, 2018, the City Council held a public hearing on Ordinance No. 2018-45, and considered and adopted Ordinance No. 2018-45 and the work plan that was provided as Exhibit A to that ordinance; and

WHEREAS, the above described team of arborists provided their report and recommendations to City staff, and the City Council discussed that report and those recommendations at a Council study session on May 7, 2019; and

WHEREAS, additional time is needed for the City Council to review the recommendations and consider the potential adoption of such recommendations that are consistent with the vision and goals of the City's Comprehensive Plan; and

WHEREAS, on May 28, 2019, the City Council first discussed this ordinance, Ordinance No. 2019-17; and

WHEREAS, on June 11, 2019, the City Council held a public hearing on this ordinance, Ordinance No. 2019-17, and considered this ordinance and the updated work plan that is provided as Exhibit A to this ordinance; and

WHEREAS, at the June 11, 2019 City Council meeting, in response to input received, the City Council made the policy decision to have Chapter 16.32 BIMC, *Preservation of Landmark Trees*, apply only to those properties located within the Winslow Master Plan Study Area as shown in Figure 2.3 of the Winslow Master Plan, updated November 8, 2006, and as depicted in Exhibit B to this ordinance; and

WHEREAS, on June 25, 2019, the City Council considered and adopted this Ordinance No. 2019-17 and the updated work plan that is provided as Exhibit A to this ordinance; and

WHEREAS, the interim official control promotes the public good and is necessary for the protection of public health, property, safety and welfare, and the public emergency on which the interim official control was imposed continues to exist and this ordinance does not change

the basis for the that declaration of emergency nor the effective date of the interim official control, which is June 26, 2018.

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 additional and supplemental findings of fact to the City Council’s initial findings of fact in support of the interim official control, as initially established by Ordinance No. 2018-25 and as subsequently amended by Ordinance Nos. 2018-32, 2018-42, and 2018-45.

Section 2. Duration of Interim Official Control Extended. The interim official control is hereby amended, as also stated in Section 6 below, to extend the duration of the interim official control until December 26, 2019, six months beyond the current expiration date which, without this amendment, would be June 26, 2019.

Section 3. 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 4. Interim Official Control Work Plan and Hearing. As provided for under RCW 35A.63.220 and RCW 36.70A.390, the City may renew an interim official control 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 interim official control as described herein based on the updated work plan that has been developed and is attached and incorporated herein as Exhibit A to this ordinance, the public hearing that is being held related to this ordinance, and the findings of fact that have been made in this ordinance and the previous ordinances related to this interim official control.

Section 5. 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 6. Declaration of Emergency; No Change to Previous Basis for Declaration of Emergency or Effective Date; Extension of Duration. This ordinance, as a public emergency ordinance necessary for the protection of the public health, public safety, public property, and public peace, including as relates to ensuring that the interim official control at issue herein does not expire prematurely, shall take effect and be in full force immediately upon its adoption. Provided, that this ordinance is not intended to change the basis of the initial emergency declaration stated in Ordinance No. 2018-25, which preceded this ordinance. 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 of this ordinance and were included in the “Whereas” clauses in Ordinance

Nos. 2018-25, 2018-32, 2018-42, and 2018-45 and all of those "Whereas" clauses are adopted as findings of fact. This ordinance amending the interim official control shall extend the duration of the interim official control for an additional six-month period, until December 26, 2019, unless terminated earlier by the City Council. This ordinance does not change the effective date of the interim official control, which is June 26, 2018. 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.

Section 7. Chapter 16.32 of the Bainbridge Island Municipal Code is hereby amended to add a new applicability section as follows.

16.32.005 Applicability.

This chapter applies only to those properties located within the Winslow Master Plan Study Area as shown in Figure 2.3 of the Winslow Master Plan, updated November 8, 2006.

PASSED BY THE CITY COUNCIL this 25th day of June, 2019.

APPROVED BY THE MAYOR this 25th day of June, 2019.


Kol Medina, Mayor
Leslie Schneider, Deputy and Acting Mayor

ATTEST/AUTHENTICATE:


Christine Brown, CMC, City Clerk

FILED WITH THE CITY CLERK: May 24, 2019
PASSED BY THE CITY COUNCIL: June 25, 2019
PUBLISHED: June 28, 2019
EFFECTIVE DATE: June 25, 2019
ORDINANCE NUMBER: 2019-17
ATTACHED: Exhibit A, Exhibit B

EXHIBIT A



PROTECTION OF LANDMARK TREES

UPDATED WORK PROGRAM FOR INTERIM REGULATIONS (May 28, 2019)

ORDINANCE 2018-25 PROTECTION OF LANDMARK TREES:

On June 26, 2018, the City Council adopted Ordinance No. 2018-25, which imposed an interim official control governing the preservation, protection, and retention of Landmark Trees located on Bainbridge Island. The interim official control created a new chapter of the municipal code: Chapter 16.32 BIMC, Protection of Landmark Trees. The interim official control took effect immediately and **will be extended until December 26, 2019**, via the adoption of this current ordinance, Ordinance No. 2019-17, unless terminated earlier or extended by the City Council.

Since being adopted, the City Council has amended the interim official control adopted by Ordinance No. 2018-25 three previous times: first on August 21, 2018 (via Ordinance No. 2018-32), on October 9, 2018 (via Ordinance 2018-42), and on December 11, 2018 (via Ordinance 2018-45).

The City has developed and is proceeding based on the *Updated Work Program* described below to address the issues related to preservation of larger trees raised by the adoption of the interim regulations set forth in Ordinance Nos. 2018-25, 2018-32, 2018-42, and 2018-45, as well as this current ordinance, Ordinance No. 2019-17.

Fall 2018

On October 16, 2018, the City Council authorized the City Manager to contract with a team of arborists led by Katy Bigelow and John Bornsworth to review and make recommendations on City regulations governing tree and vegetation removal, including Chapter 16.32 BIMC. The City Manager negotiated and executed a contract with the team of arborists, and the team's recommendations were received in December 2018.

May 2019

The City Council reviewed the final report and recommendations from the consultant arborists. The Council is in the process of considering and providing policy direction to staff about which recommendations to pursue. A possible result of that Council consideration could be proposed code changes, first reviewed by the Planning Commission, and/or recommendations not related to the code such as improved outreach and education materials.

July-August 2019

After the City Council provides policy direction to City staff, the Planning Commission would review any drafted code changes (via a draft ordinance). After holding a public hearing, the Planning Commission would make recommendations to the Council on a tree preservation, protection, and retention ordinance.

August-October 2019

The City Council would then review and take action on the proposed ordinance.

