

## **ORDINANCE NO. 2019-26**

**AN ORDINANCE** of the City of Bainbridge Island, Washington, adopted pursuant to RCW 35A.63.220 and RCW 36.70A.390; amending Ordinance No. 2019-10; providing for severability; leaving the effective date of the moratorium unchanged; and extending the moratorium in its current form for two months until December 3, 2019, and in a more narrow form from December 4, 2019, until April 3, 2020.

**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 City 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 that amendment process was ongoing as of July 9, 2018, which was the original date that the moratorium was set to expire, and that process continues to be ongoing; and

**WHEREAS**, the City Council approved Ordinance 2018-14 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 Council authorized staff to proceed with a work plan addressing the priorities identified at the joint meeting; and

**WHEREAS**, on April 2 and 23, May 7 and 21, June 4 and 18, August 6, 13 and 20, September 4 and 17, and October 15, 2018, the City's Design Review Board discussed alternatives for revisions to the City's land use review procedures and/or subdivision design guidelines; and

**WHEREAS**, on March 22, May 10, June 7, 14, and 21, July 12 and 26, August 9, 23, and 30, September 13 and 27, October 25, November 8 and 29, and December 13, 2018, as well

as on January 10, and February 13 and 28, 2019, the City's Planning Commission discussed alternatives for revisions to the City's land use review procedures, subdivision design guidelines, and/or subdivision standards; 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 the City Council had a special workshop related to land use review procedures on August 27, 2018; and

**WHEREAS**, the City's Planning Commission completed their review of land use review procedures and forwarded their recommendations on those issues to the City Council, and on December 11, 2018, the Council enacted Ordinance No. 2018-20 related to revisions and updates to the City's land use review procedures; and

**WHEREAS**, as part of the Planning Commission's review and consideration of the City's subdivision review procedures, design guidelines, and standards, the Commission has reviewed the proposed ordinance related to such regulations, Ordinance No. 2019-03; and

**WHEREAS**, on February 13, 2019, and continuing to February 28, 2019, the Planning Commission conducted a public hearing on Ordinance No. 2019-03, and subsequently forwarded the proposed ordinance and their recommendations to the City Council; 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 guidelines, standards, dimensional standards, and/or land use review procedures; and

**WHEREAS**, the City Council reviewed and considered proposed updates to the City's subdivision regulations at regularly scheduled meetings on September 4 and 11, October 9, and December 4, 2018, and January 22, 2019; and

**WHEREAS**, the City Council is in the process of considering the Planning Commission's recommendations related to proposed updates to the City's subdivision regulations as included in Ordinance No. 2019-03, including at the Council's meetings on March 19, April 2 and 16, May 28, and July 23, 2019; and

**WHEREAS**, the City Council held a public hearing on Ordinance 2019-03 on August 27, 2019, and September 24, 2019; and

**WHEREAS**, City staff is working with the Design Review Board and a consultant team related to updating the City's Design Guidelines (BIMC 18.18.030) more generally (i.e., the design guidelines that aren't included in the separate effort described above related to design guidelines for subdivisions), and that work was completed in August 2019; and

**WHEREAS**, on January 30 and May 22, 2019, the City hosted public meetings on the design review regulations update; and

**WHEREAS**, on March 4 and 18, April 1, May 6, June 17, and July 15, 2019, the City's Design Review Board discussed the design review regulations update; and

**WHEREAS**, at the February 5 and June 4, 2019, City Council study sessions, the City's consultant, Framework, provided briefings on the design review regulations update; and

**WHEREAS**, the Planning Commission held a public hearing on Ordinance No. 2019-25 (related to design review regulations) on September 5, 2019; and

**WHEREAS**, City staff provided the Planning Commission's September 5, 2019, recommendations related to the design review regulations update to the City Council for consideration at the Council's September 17, 2019, study session; and

**WHEREAS**, the City Council held a public hearing on Ordinance No. 2019-25 on September 24, 2019, and considered the input it received related to Ordinance No. 2019-25 prior to adopting the ordinance; 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 July 24, 2018, the Affordable Housing Task Force ("AHTF") presented its final report to the City Council and the Council discussed the recommendations more thoroughly on August 21, 2018; and

**WHEREAS**, on October 2 and December 4, 2018, the City Council received a project update on the economic market analysis from the consultant (ECONorthwest/Forterra) related to inclusionary zoning and possible updates to the City's Transfer of Development program; and

**WHEREAS**, on February 19, 2019, the City Council reviewed and provided direction to staff related to the ECONorthwest/Forterra final report and the AHTF report recommendations, and the Council discussed the status of the Council's Affordable Housing Ad Hoc Committee; and

**WHEREAS**, City staff members continue to work on prioritizing and organizing work on the inclusionary zoning and other AHTF report recommendations which were endorsed by the Council at its February 19, 2019, meeting and work is ongoing in this effort; and

**WHEREAS**, the City Council had a policy discussion on September 17, 2019, regarding inclusionary zoning or multifamily property tax exemption programs; 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, June 19, July 17, August 21, September 4 and 18, October 2 and 16, November 6 and 20, and December 4, 2018, as well as on January 15, February 5 and 19, March 5 and 19, April 2 and 16, May 7 and 21, June 4 and 18, July 2 and 16, August 6 and 20, and September 3 and 17, 2019, the City Council was provided further moratorium work program status report updates; and

**WHEREAS**, on June 26, 2018, the City Council held a public hearing and approved Ordinance 2018-23, extending the development moratorium for another 90 days until October 9, 2018; and

**WHEREAS**, on September 25, 2018, the City Council held a public hearing and approved Ordinance 2018-41, and thereby extended the development moratorium for another six (6) months, and in so doing narrowed the moratorium to remove two-lot short subdivisions in which there is an existing single-family residence from the moratorium; and

**WHEREAS**, on October 16, 2018, the City Council discussed integrating critical area regulations into the Shoreline Master Program (Chapter 16.12 BIMC) and made the policy decision to not apply new Aquifer Recharge Protection Area regulations (BIMC 16.20.100) within the City's shoreline jurisdiction areas; and

**WHEREAS**, as a result of that policy decision, and the City Council's affirmation on October 23, 2018, that the moratorium should be narrowed in that manner, the Council directed staff to prepare an ordinance to entirely remove Section 3.B. (which, in effect, applied the Aquifer Recharge Protection Area regulations in the City's shoreline jurisdiction areas) from the moratorium; and

**WHEREAS**, on October 23, 2018, the City Council discussed additional revisions to the development moratorium, including related to excluding from the moratorium certain permit applications for development in the Business/Industrial zoning district, and the Council directed staff to prepare an ordinance to narrow the moratorium accordingly; and

**WHEREAS**, on October 23, 2018, the City Council also discussed potentially further narrowing provisions of the moratorium related to applications for new short subdivisions that the Council had previously narrowed, and the Council decided to not take such action at that time pending the Planning Commission's ongoing but not yet completed work related to subdivisions, including new subdivision design guidelines and revised subdivision standards and review procedures; and

**WHEREAS**, on October 23, 2018, the City Council also discussed issues related to making condominiums out of accessory dwelling units ("ADUs") and common ownership of ADUs, and the Council directed staff to work on possible revisions to the BIMC to allow the Council to further consider the common ownership issue related to ADUs; and

**WHEREAS**, the City Council discussed requiring common ownership for new ADUs at its meetings on June 18, July 23 and September 10, 2019, and directed staff to begin legislative review with the Planning Commission to adopt such regulations via draft Ordinance 2019-09; and

**WHEREAS**, on November 13, 2018, the City Council approved Ordinance 2018-43, and thereby narrowed the moratorium as requested by the Council and described above related to entirely removing Section 3.B. (which, in effect, applied the Aquifer Recharge Protection Area regulations in the City's shoreline jurisdiction areas) from the moratorium, and broadening an exclusion related to certain Major Site Plan and Design Review and Major Conditional Use Permit proposals to include in that exclusion such proposals for properties located in the Business/Industrial District; and

**WHEREAS**, although the City has been working to address the land use issues identified in the development moratorium, as described above, the updated subdivision standards and design guidelines would be adopted on September 24, 2019, at the earliest, and work is ongoing and not yet completed on affordable housing and the Site Plan and Design Review and Conditional Use Permit Decision Criteria; and

**WHEREAS**, on September 3 and 10, 2019, the City Council discussed the moratorium, including the option of extending it for two additional months (to December 3, 2019) to allow time for public outreach to educate the public about the new subdivision standards and design review regulations and to possibly extend a more narrow form of the moratorium beyond December 3, 2019, in order to adopt affordable housing requirements; and

**WHEREAS**, it is anticipated that an extended moratorium would be narrowed to apply only to certain types of development in the Winslow Master Plan Study Area, with some exceptions; 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, 2018-14, 2018-23, 2018-41, 2018-43, and 2019-10.

**Section 2. Public Hearing.** Pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City Council conducted a public hearing on this extension of the moratorium at its meeting on September 24, 2019, and took public testimony and considered further findings of fact.

**Section 3. Moratorium Amended.** The moratorium is hereby amended, as also stated in Section 7 and Section 8 below, to extend the moratorium in its current form for two months until December 3, 2019, and then in a more narrow form as described below until April 3, 2020.

**Section 4. 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 has thereby previously extended 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, and the City is hereby extending the moratorium for an additional six months based on an updated work plan (see attached Exhibit A), conducting another public hearing, and adopting additional findings of fact as stated in this ordinance.

**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. No Change to Basis for Declaration of Emergency or Effective Date.** 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 moratorium ordinances which preceded this ordinance, Ordinance Nos. 2018-02, 2018-03, 2018-05, 2018-09, 2018-14, 2018-23, 2018-41, 2018-43, and 2019-10, 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 and Ordinance No. 2018-09, and Ordinance Nos. 2018-14, 2018-23, 2018-41, 2018-43, and 2019-10, and as well as in this ordinance, and those “Whereas” clauses are adopted as findings of fact.

**Section 7. Change to Duration in Current Form to December 3, 2019.** This ordinance amending the moratorium shall cause the moratorium to remain effective in its current form until December 3, 2019, and in a more limited form as described below in Section 8 until April 3, 2020, unless terminated earlier by the City Council. This ordinance does not change the effective date of the moratorium, which is January 9, 2018.

**Section 8. Change to Duration in Narrowed Form from December 4, 2019, until April 3, 2020.** This ordinance amending the moratorium shall also cause a more narrow form of the moratorium to be in effect from December 4, 2019, through April 3, 2020, as follows:

A. Subject to the exclusions below, the moratorium shall apply to Major Site Plan and Design Review and Major Conditional Use Permit proposals that did not, before the effective date of the moratorium, have a pre-application conference on the Planning Department's calendar, and which proposals are for development within the Winslow Master Plan Study Area. See, Exhibit B (attached).

B. Exclusions.

(1) The moratorium shall not apply in the Mixed Use Town Center/Central Core Overlay District.

(2) The moratorium shall not apply to development proposals that include 10% or more of total residential units designated as affordable housing. "Affordable housing" means affordable housing as governed by Chapters 18.21 and 18.12 of the Bainbridge Island Municipal Code ("BIMC"), as well as BIMC 18.36.030.

(3) The moratorium shall not apply to subdivisions.

(4) The moratorium shall not apply to permits and approvals for affordable housing projects that qualify as Housing Design Demonstration Project (HDDP) Tier 3 projects pursuant to BIMC 2.16.020.S. (formerly BIMC 2.16.020.Q.) and Table 2.16.020.S-1 (formerly Table 2.16.020.Q-1).

(5) The moratorium shall not apply to permits and approvals for government facilities and structures; educational facilities and preschools; wireless communication facilities; and emergency medical and disaster relief facilities.

The moratorium shall remain effective for the updated and extended period as established for the moratorium, which is currently scheduled to expire in its current form based on this ordinance on December 3, 2019, and in a more limited form as described above until April 3, 2020, unless terminated earlier by the City Council. This ordinance does not change the effective date of the moratorium, which is January 9, 2018. 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 24<sup>th</sup> day of September, 2019.

APPROVED by the Mayor this 24<sup>th</sup> day of September, 2019.

  
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Kol Medina, Mayor

ATTEST/AUTHENTICATE:

  
Christine Brown, CMC, City Clerk

FILED WITH THE CITY CLERK	September 20, 2019
PASSED BY THE CITY COUNCIL	September 24, 2019
PUBLISHED:	September 27, 2019
EFFECTIVE DATE:	October 2, 2019
ORDINANCE NO:	2019-26

Attached:

Exhibit A (Work Plan)

Exhibit B (Winslow Master Plan Study Area)

## Exhibit A

### Moratorium on Certain Development Work Plan Schedule Ordinance No. 2019-26 (December 2019 – June 2020)

Work Program Item	Description
<b>Subdivision Standards</b>	Revise the subdivision standards to result in residential development that reflects Comprehensive Plan goals and policies included in the land use, housing, and environmental elements. These updated standards are anticipated to be adopted at the September 24, 2019, City Council meeting (Ordinance 2019-03).
<b>Design Guidelines</b>	Update and improve the design guidelines and review process to result in higher quality development that reflects the Island's values and character. These updated design review regulations, <i>Design for Bainbridge</i> , are anticipated to be adopted at the September 24, 2019, City Council meeting (Ordinance 2019-25).
<b>Conditional Use / Site Plan Decision Criteria</b>	Revise criteria to reduce subjectivity in decision-making and better ensure outcomes consistent with the Comprehensive Plan. The Planning Commission will complete their review and recommendation on updated Decision Criteria and it is anticipated that the City Council could adopt these amendments in November 2019 (Ordinance 2019-24).
<b>Affordable Housing</b>	Develop an affordable housing work program in response to an Inclusionary Zoning Feasibility Analysis and Affordable Housing Task Force reports. Affordable housing tools being considered for adoption include Inclusionary Zoning and the Multifamily property tax exemption.

