

## **ORDINANCE NO. 2020-17**

**AN ORDINANCE** of the City of Bainbridge Island, Washington, amending the City's Shoreline Master Program related to critical areas regulations and nonconforming structures, uses, and lots; and amending several sections of Chapter 16.12 of the Bainbridge Island Municipal Code accordingly, as specifically identified in Exhibit A to this ordinance.

**WHEREAS**, the Washington State Shoreline Management Act (Chapter 90.58 RCW, referred to herein as the "SMA") recognizes that shorelines are among the most valuable and fragile resources of the state, and requires the City of Bainbridge Island ("City") and the Washington State Department of Ecology ("Ecology") to jointly adopt, update, and amend the Shoreline Master Program ("SMP") pursuant to Chapter 173-26 WAC; and

**WHEREAS**, the City adopted a comprehensive update to its SMP (Ordinance No. 2014-04) on July 14, 2014, which was approved by Ecology on July 16, 2014; and

**WHEREAS**, the City adopted an update to its Critical Areas Ordinance (Ordinance No. 2018-01) on February 27, 2018; and

**WHEREAS**, RCW 36.70A.480(4) requires that SMPs provide a level of protection to critical areas located within shorelines of the state that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources; and

**WHEREAS**, the City desires to integrate the updated critical areas regulations into its Shoreline Master Program which requires a SMP amendment pursuant to WAC 173-26-090(1); and

**WHEREAS**, the City chose to use the optional joint review process for amending the SMP pursuant to WAC 173-26-104; and

**WHEREAS**, on October 12, 2017, November 16, 2017, April 26, 2018, and August 30, 2018, the Planning Commission reviewed amendments to the SMP related to critical areas; and

**WHEREAS**, on January 11, 2018, February 8, 2018, March 8, 2018, March 29, 2018, April 12, 2018, April 19, 2018, and August 30, 2018, the Planning Commission reviewed amendments to the SMP related to nonconforming structures, uses, and lots; and

**WHEREAS**, from May 8, 2018 to June 9, 2018, following timely public notification, the City and Ecology held a 30-day public comment period on the amendment related to critical areas regulations; and

**WHEREAS**, on May 24, 2018 and June 7, 2018, following timely public notification, the Planning Commission and Ecology held a joint public hearing on the amendment related to critical areas regulations; and

**WHEREAS**, on June 7, 2018, the Planning Commission recommended combining the nonconforming structures, uses, and lots revisions and the critical areas revisions into one amendment; and

**WHEREAS**, on July 24, 2018, the City Council directed staff to combine the nonconforming structures, uses, and lots revisions and the critical areas revisions into one amendment and to schedule a public hearing on the amendment on September 11, 2018; and

**WHEREAS**, from September 10, 2018 to October 10, 2018, following timely public notification, the Planning Commission and Ecology held a 30-day public comment period on the amendment related to critical areas and nonconforming structures, uses, and lots; and

**WHEREAS**, on September 11, 2018, following timely public notification, the Planning Commission and Ecology held a joint public hearing on the amendment related to critical areas and nonconforming structures, uses, and lots; and

**WHEREAS**, on October 2, 2018, October 9, 2018, October 16, 2018, November 27, 2018, December 11, 2018, and January 8, 2019, the City Council considered the proposed amendment, the recommendations of the Planning Commission, the public testimony provided, and the record; and

**WHEREAS**, on October 12, 2018, the City issued a Determination of Non-Significance on the amendment consistent with the State Environmental Policy Act (Chapter 43.21C RCW) and Chapter 16.04 BIMC, and no person filed an appeal; and

**WHEREAS**, on October 26, 2018, the City transmitted a Notice of Intent to the Washington State Department of Commerce in accordance with WAC 173-26-104 and RCW 36.70A.106; and

**WHEREAS**, on January 8, 2019, the City Council adopted Resolution No. 2019-05 approving the proposed SMP amendment relating to critical areas regulations and nonconforming structures, uses, and lots and directing staff to submit the draft to Ecology for initial state review pursuant to WAC 173-26-104; and

**WHEREAS**, on April 19, 2019, the City submitted the draft SMP amendment to Ecology for an initial determination of concurrence in accordance with the submittal requirements in WAC 173-26-110; and

**WHEREAS**, on December 9, 2019, Ecology determined that the City's draft SMP amendment, subject to and including Ecology's required and recommended changes, was consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through -251 and .020 definitions); and

**WHEREAS**, on June 23, 2020, the City Council considered Ecology's required and recommended changes as well as those identified by City staff, and directed staff to draft an ordinance incorporating Ecology's changes and staff's edits; and

**WHEREAS**, on September 8, 2020, the City Council set the public hearing for this Ordinance No. 2020-17 for September 22, 2020; and

**WHEREAS**, on September 22, 2020, following timely public notification, the City Council held a public hearing on Ordinance No. 2020-17, including all components of the SMP amendment specified in Exhibit A to this ordinance; and

**WHEREAS**, on October 2, 2020, the City reissued the Determination of Non-Significance on the amendment to ensure all noticing requirements were met consistent with the State Environmental Policy Act (Chapter 43.21C RCW) and Chapter 16.04 BIMC, and no person filed an appeal; and

**WHEREAS**, on November 24, 2020, the City Council enacted this Ordinance No. 2020-17, thereby approving all of the changes related to this SMP amendment; and

**WHEREAS**, the SMP amendment will result in “no net loss” of shoreline ecological functions relative to the established baseline and may ultimately produce an improvement in shoreline ecological functions through incentive-based restoration; the SMP amendment is consistent with and meets the SMP Guidelines established under Chapter 173-26 WAC; the SMP amendment is consistent with and implements the SMA (Chapter 90.58 RCW) and the Growth Management Act (Chapter 36.70A RCW); the SMP amendment is consistent with the Bainbridge Island Comprehensive Plan; and the SMP amendment is internally consistent.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BAINBRIDGE ISLAND, WASHINGTON, DOES ORDAIN AS FOLLOWS:**

**Section 1. Purpose.** The purpose of this ordinance is to integrate the regulations updated as a part of the City’s Critical Areas Ordinance (Chapter 16.20 BIMC) and to clarify allowed actions for all nonconforming structures, uses, and lots, as well as specific allowances for nonconforming single-family residential primary structures. The majority of the amendments are located in Section 4.1.5, Critical Areas; Section 4.2.1 Nonconforming Uses, Nonconforming Structures, and Nonconforming Lots; and Section 8.0, Definitions. Other minor changes are located throughout the Shoreline Master Program as shown on the attached Exhibit A to create consistency with the changes made to the sections above. The City’s “WAC 173-26-110 Submittal Package,” which includes a summary of proposed amendments to policy and regulatory language with explanatory text and other materials which document the necessity for the proposed changes to the City’s Shoreline Master Program, is incorporated by this reference as findings of fact.

**Section 2. Findings.** The recitals set forth above are hereby adopted as the City Council’s findings in support of this ordinance.

**Section 3. Amendment to the Shoreline Master Program.**

- A. The City of Bainbridge Island Shoreline Master Program, adopted by Ordinance No. 2014-04 on July 14, 2014, is amended as shown in Exhibit A and incorporated herein by this reference.
- B. Chapter 16.12 of the Bainbridge Island Municipal Code is hereby amended as shown in Exhibit A and incorporated herein by this reference.

**Section 4. Codification.** The City Council hereby adopts the amendments set forth in this ordinance to the Shoreline Master Program. As is the case currently, the Shoreline Master Program is part of the City’s development regulations and the amendments adopted herein constitute amendments to those development regulations, including Chapter 16.12 of the Bainbridge Island Municipal Code. The Director of Planning and Community Development shall work with the codifier of the Bainbridge Island Municipal Code in order to ensure that the regulations in the Shoreline Master Program and as otherwise adopted by this ordinance are appropriately codified.

**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. Scrivener’s Error.** The City Clerk and codifiers of the ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener and clerical errors, references, ordinance numbering, section and subsection numbers, and any references thereto.

**Section 7. Effective Date.** This ordinance shall take effect upon the date of a letter to the City of Bainbridge Island from the Washington State Department of Ecology approving the Shoreline Master Program Amendment adopted by this ordinance.

PASSED by the City Council this 24<sup>th</sup> day of November, 2020.

APPROVED by the Mayor this 24<sup>th</sup> day of November, 2020.



---

Leslie Schneider, Mayor

ATTEST/AUTHENTICATE:



Christine Brown, CMC, City Clerk

FILED WITH THE CITY CLERK:  
PASSED BY THE CITY COUNCIL:  
PUBLISHED:  
EFFECTIVE DATE:

September 4, 2020  
November 24, 2020  
November 27, 2020  
This ordinance shall take effect upon the date of a letter to the City of Bainbridge Island from the Washington State Department of Ecology approving the Shoreline Master Program Amendment adopted by this ordinance.  
2020-17  
Exhibit A

ORDINANCE NUMBER:  
EXHIBIT