



CITY OF
BAINBRIDGE ISLAND

**CITY COUNCIL STUDY SESSION
TUESDAY, FEBRUARY 04, 2020**

BAINBRIDGE ISLAND CITY HALL
280 MADISON AVENUE N.
BAINBRIDGE ISLAND, WASHINGTON

AGENDA

1. **CALL TO ORDER / ROLL CALL - 6:00 PM**
2. **EXECUTIVE SESSION**
 - 2.A **(6:05 PM) Pursuant to RCW 42.30.110(1)(i), to discuss with legal counsel matters relating to litigation or potential litigation to which the city, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency, and pursuant to RCW 42.30.110(1)(g), to evaluate the qualifications of an applicant for employment or to review the performance of a public employee, 30 Minutes**
3. **APPROVAL OF AGENDA/ CONFLICT OF INTEREST DISCLOSURE - 6:35 PM**
4. **MAYOR'S REPORT - 6:40 PM**
5. **FUTURE COUNCIL AGENDAS**
 - 5.A **(6:45 PM) Future Council Agendas, 15 Minutes**
Regular City Council Business Meeting February 11, 2020.pdf
City Council Study Session February 18, 2020.pdf
Regular City Council Business Meeting February 25, 2020.pdf
2020 List of Pending Council Meeting Topics.docx
2020 List of Proposed Future Council Topics.docx
 - 5.B **(7:00 PM) Council February 8 Retreat Agenda - Mayor Schneider, 10 Minutes**
Special City Council Meeting February 8, 2020
6. **UNFINISHED BUSINESS**
 - 6.A **(7:10 PM) Update on the Development Moratorium - Planning, 10 Minutes**
Moratorium Update Abbreviated

Moratorium Extension Handout Final 100419
Ordinance No. 2019-26 Extending the Development Moratorium Approved 092419

- 6.B (7:20 PM) Green Building Update - Planning, 10 Minutes**
Staff Memo January Update 2020_01_28
- 6.C (7:30 PM) Update on Vision 2050 and Population Allocation - Planning, 10 Minutes**
Staff Memo on PSRC Vision 2050 Plan 20200131
- 6.D (7:40 PM) Sustainable Transportation Plan Update - Public Works, 10 Minutes**
- 6.E (7:50 PM) State Route 305 / Day Road Roundabout Project Update - Public Works, 10 Minutes**
- 6.F (8:00 PM) Discussion of Possible Inclusionary Zoning / Multifamily Tax Exemption Programs - Planning, 60 Minutes**
Affordable Housing Presentation 20200130
2019 Bremerton-Silverdale MSA HUD Median Income Table.pdf
PSRC Inclusionary Zoning Summary.pdf
PSRC MFTE Summary.pdf
Sept 17 2019 ECONorthwest Council Briefing Memo
February 2019 Transfer of Development Rights and Inclusionary Zoning Assessment (ECONorthwest & Forterra)
- 6.G (9:00 PM) Code of Conduct and Ethics Program Review - Executive, 30 Minutes**
Resolution No. 2019-26 Updating the City's Ethics Program - Approved 112619
Staff Memo - Outstanding Discussion Point from November 26, 2019 Council Meeting
Cover Page - April 30, 2019 Ethics Workshop
Greg Rubstello - Ethics Workshop Presentation - April 30, 2019
Steve Gross - Ethics Workshop Presentation - April 30, 2019
Port Townsend Code of Ethics - Chapter 2.80 PTMC
HCR 4401 Regarding Code of Conduct
Resolution No. 2019-13 - Revising Ethics Program Related to Article I (Previously Tabled by CC and Never Adopted)
- 7. FOR THE GOOD OF THE ORDER - 9:30 PM**
- 8. ADJOURNMENT - 9:40 PM**

GUIDING PRINCIPLES

Guiding Principle #1 - Preserve the special character of the Island, which includes downtown Winslow's small town atmosphere and function, historic buildings, extensive forested areas, meadows, farms, marine views and access, and scenic and winding roads supporting all forms of transportation.

Guiding Principle #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.

Guiding Principle #3 - Foster diversity with a holistic approach to meeting the needs of the Island and the human needs of its residents consistent with the stewardship of our finite environmental resources.

Guiding Principle #4 - Consider the costs and benefits to Island residents and property owners in making land use decisions.

Guiding Principle #5 - The use of land on the Island should be based on the principle that the Island's environmental resources are finite and must be maintained at a sustainable level.

Guiding Principle #6 - Nurture Bainbridge Island as a sustainable community by meeting the needs of the present without compromising the ability of future generations to meet their own needs.

Guiding Principle #7 - Reduce greenhouse gas emissions and increase the Island's climate resilience.

Guiding Principle #8 - Support the Island's Guiding Principles and Policies through the City's organizational and operating budget decisions.



City Council meetings are wheelchair accessible. Assisted listening devices are available in Council Chambers. If you require additional ADA accommodations, please contact the City Clerk's Office at 206-780-8604 or cityclerk@bainbridgewa.gov by noon on the day preceding the meeting.



CITY OF
BAINBRIDGE ISLAND

City Council Study Session Agenda Bill

MEETING DATE: February 4, 2020

ESTIMATED TIME: 30 Minutes

AGENDA ITEM: (6:05 PM) Pursuant to RCW 42.30.110(1)(i), to discuss with legal counsel matters relating to litigation or potential litigation to which the city, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency, and pursuant to RCW 42.30.110(1)(g), to evaluate the qualifications of an applicant for employment or to review the performance of a public employee,

SUMMARY: Executive session pursuant to RCW 42.30.110(1)(i) and RCW 42.30.110(1)(g).

AGENDA CATEGORY: Discussion

PROPOSED BY: Executive

RECOMMENDED MOTION: Hold Executive Session.

STRATEGIC PRIORITY: Good Governance

FISCAL IMPACT:

Amount:	
Ongoing Cost:	
One-Time Cost:	
Included in Current Budget?	

BACKGROUND:

ATTACHMENTS:

FISCAL DETAILS:

Fund Name(s):

Coding:



CITY OF
BAINBRIDGE ISLAND

City Council Study Session Agenda Bill

MEETING DATE: February 4, 2020

ESTIMATED TIME: 15 Minutes

AGENDA ITEM: (6:45 PM) Future Council Agendas,

SUMMARY: Council will review future Council agendas.

AGENDA CATEGORY: Discussion

PROPOSED BY: Executive

RECOMMENDED MOTION: Discussion.

STRATEGIC PRIORITY: Good Governance

FISCAL IMPACT:

Amount:	
Ongoing Cost:	
One-Time Cost:	
Included in Current Budget?	

BACKGROUND:

ATTACHMENTS:

[Regular City Council Business Meeting February 11, 2020.pdf](#)

[City Council Study Session February 18, 2020.pdf](#)

[Regular City Council Business Meeting February 25, 2020.pdf](#)

[2020 List of Pending Council Meeting Topics.docx](#)

[2020 List of Proposed Future Council Topics.docx](#)

FISCAL DETAILS:

Fund Name(s):

Coding:



**CITY OF
BAINBRIDGE ISLAND**

**CITY COUNCIL REGULAR BUSINESS MEETING
TUESDAY, FEBRUARY 11, 2020**

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

AGENDA

- 1. CALL TO ORDER/ROLL CALL/PLEDGE OF ALLEGIANCE - 6:00 PM**
- 2. EXECUTIVE SESSION**
 - 2.A Pursuant to RCW 42.30.110(1)(g), to evaluate the qualifications of an applicant for employment or to review the performance of a public employee. 30 Minutes**
- 3. APPROVAL OF AGENDA / CONFLICT OF INTEREST DISCLOSURE**
- 4. PUBLIC COMMENT**
- 5. MAYOR'S REPORT**
- 6. CITY MANAGER'S REPORT**
- 7. FUTURE COUNCIL AGENDAS**
 - 7.A Future Council Agendas, 15 Minutes**
- 8. PRESENTATION(S)**
 - 8.A (x PM) Proclamation Declaring February 2020 as "Black History Month" - Mayor Schneider, 5 Minutes
Black History Month Proclamation 2020**
- 9. PUBLIC HEARING(S)**
- 10. UNFINISHED BUSINESS**
 - 10.A Review 2019 Results for Citywide Workplan Priorities and Comprehensive Plan Implementation - Executive, 15 Minutes**

10.B (xx PM) Youth Mental Health Workshop Proposal - Council Ad Hoc Committee, Executive, 20 Minutes
BI Youth Mental Health Summit Proposal - for CC 01282020

10.C Police and Court Building Project Professional Services Agreement Amendment

11. NEW BUSINESS

11.A Ordinance 2020-03 "Housekeeping" Changes: Revising BIMC Title 2 Administration,....and Land Use Procedures and Title 18 Zoning 20 Minutes
CC Staff Memo
DRAFT Ord 2020-03
Exhibit A Title 2 Housekeeping Changes.docx
Exhibit B BIMC 18.09.020 Use Table Excerpt Temporary Uses.docx
Exhibit C Title 18 Housekeeping Changes.docx

11.B Front Broom Sweeper Procurement - Public Works, 5 Minutes
Front Broom Sweeper Sales Order.xls

11.C Police Vehicle Procurement - Public Works, 5 Minutes
Columbia Ford Vehicle Quote.pdf

11.D Police Vehicle Equipment Upfitting Service Agreement- Public Works, 5 Minutes
Police Vehicle Upfitting Agreement for Purchased Services.docx

11.E (x) Ordinance No. 2020-01, Updating the City's General Code Enforcement Process Contained in Chapter 1.26 BIMC, 20 Minutes
Ordinance No. 2020-01, Updating the City's General Code Enforcement Process Contained in Chapter 1.26 BIMC
Exhibit A to Ordinance No. 2020-01 - Redline Showing Changes from Current Ch. 1.26 BIMC

12. CONSENT AGENDA

12.A Agenda Bill for Consent Agenda, 5 Minutes

12.B Accounts Payable and Payroll

12.C City Council Study Session Minutes, January 21, 2020

12.D City Council Business Meeting Minutes, January 28, 2020

12.E Resolution No. 2020-01 Relating to a Fee Schedule Update - Finance 5 Minutes

- 12.F COBI and Bainbridge Island Metropolitan Park and Recreation District (BIMPRD) Trail Workgroup Inventory Discussion - Public Works, 5 Minutes**
Trail Planning Presentation_012820.pdf

13. COMMITTEE REPORTS

- 13.A Committee Reports, Executive 5 Minutes**
Climate Change Advisory Committee Minutes, December 18, 2019

14. FOR THE GOOD OF THE ORDER

15. ADJOURNMENT

GUIDING PRINCIPLES

Guiding Principle #1 - Preserve the special character of the Island, which includes downtown Winslow's small town atmosphere and function, historic buildings, extensive forested areas, meadows, farms, marine views and access, and scenic and winding roads supporting all forms of transportation.

Guiding Principle #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.

Guiding Principle #3 - Foster diversity with a holistic approach to meeting the needs of the Island and the human needs of its residents consistent with the stewardship of our finite environmental resources.

Guiding Principle #4 - Consider the costs and benefits to Island residents and property owners in making land use decisions.

Guiding Principle #5 - The use of land on the Island should be based on the principle that the Island's environmental resources are finite and must be maintained at a sustainable level.

Guiding Principle #6 - Nurture Bainbridge Island as a sustainable community by meeting the needs of the present without compromising the ability of future generations to meet their own needs.

Guiding Principle #7 - Reduce greenhouse gas emissions and increase the Island's climate resilience.

Guiding Principle #8 - Support the Island's Guiding Principles and Policies through the City's organizational and operating budget decisions.



City Council meetings are wheelchair accessible. Assisted listening devices are available in Council Chambers. If you require additional ADA accommodations, please contact the City Clerk's Office at 206-780-8604 or cityclerk@bainbridgewa.gov by noon on the day preceding the meeting.



CITY OF
BAINBRIDGE ISLAND

**CITY COUNCIL STUDY SESSION
TUESDAY, FEBRUARY 18, 2020**

BAINBRIDGE ISLAND CITY HALL
280 MADISON AVENUE N.
BAINBRIDGE ISLAND, WASHINGTON

AGENDA

1. **CALL TO ORDER / ROLL CALL - 6:00 PM**
Councilmember Medina will be absent.
2. **EXECUTIVE SESSION**
 - 2.A (6:05 PM) Pursuant to RCW 42.30.110(1)(i), to discuss with legal counsel matters relating to litigation or potential litigation to which the city, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency, 30 Minutes
3. **APPROVAL OF AGENDA/ CONFLICT OF INTEREST DISCLOSURE**
4. **MAYOR'S REPORT**
5. **FUTURE COUNCIL AGENDAS**
 - 5.A **Future Council Agendas, 15 Minutes**
6. **PRESENTATIONS**
7. **UNFINISHED BUSINESS**
 - 7.A **Sustainable Transportation Plan Update - Public Works 15 Minutes**
 - 7.B **Sportsman Club Roundabout Design Discussion - Public Works, 45 Minutes**
8. **NEW BUSINESS**
 - 8.A **Waterfront Park Dock Reconfiguration Discussion - Public Works, 15 Minutes**

8.B Shoreline Master Plan - Ecology Response on Critical Areas and Nonconforming Limited Amendment 20 Minutes

9. CITY COUNCIL DISCUSSION

9.A (8:30 PM) Review Resolution 2018-03 and Goals for Suzuki Property Affordable Housing Project - Executive, 45 Minutes
Resolution No. 2018-03 Establishing Goals for the City-owned Suzuki Property Approved 012318

10. FOR THE GOOD OF THE ORDER

11. ADJOURNMENT

GUIDING PRINCIPLES

Guiding Principle #1 - Preserve the special character of the Island, which includes downtown Winslow's small town atmosphere and function, historic buildings, extensive forested areas, meadows, farms, marine views and access, and scenic and winding roads supporting all forms of transportation.

Guiding Principle #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.

Guiding Principle #3 - Foster diversity with a holistic approach to meeting the needs of the Island and the human needs of its residents consistent with the stewardship of our finite environmental resources.

Guiding Principle #4 - Consider the costs and benefits to Island residents and property owners in making land use decisions.

Guiding Principle #5 - The use of land on the Island should be based on the principle that the Island's environmental resources are finite and must be maintained at a sustainable level.

Guiding Principle #6 - Nurture Bainbridge Island as a sustainable community by meeting the needs of the present without compromising the ability of future generations to meet their own needs.

Guiding Principle #7 - Reduce greenhouse gas emissions and increase the Island's climate resilience.

Guiding Principle #8 - Support the Island's Guiding Principles and Policies through the City's organizational and operating budget decisions.



City Council meetings are wheelchair accessible. Assisted listening devices are available in Council Chambers. If you require additional ADA accommodations, please contact the City Clerk's Office at 206-780-8604 or cityclerk@bainbridgewa.gov by noon on the day preceding the meeting.



CITY OF
BAINBRIDGE ISLAND

CITY COUNCIL REGULAR BUSINESS MEETING
TUESDAY, FEBRUARY 25, 2020

BAINBRIDGE ISLAND CITY HALL
280 MADISON AVENUE N.
BAINBRIDGE ISLAND, WASHINGTON

AGENDA

1. **CALL TO ORDER/ROLL CALL/PLEDGE OF ALLEGIANCE - 6:00 PM**
2. **EXECUTIVE SESSION**
3. **APPROVAL OF AGENDA / CONFLICT OF INTEREST DISCLOSURE**
4. **PUBLIC COMMENT**
5. **MAYOR'S REPORT**
6. **CITY MANAGER'S REPORT**
7. **FUTURE COUNCIL AGENDAS**
 - 7.A **Future Council Agendas, 15 Minutes**
8. **PRESENTATION(S)**
9. **PUBLIC HEARING(S)**
10. **UNFINISHED BUSINESS**
 - 10.A **(x PM) Visconsi / Sound to Olympics Trail Project Update and Budget Amendment - Public Works, 10 Minutes**
 - Attachment A - Timeline Visconsi Trail
 - Attachment B - MOU Addendum 1
 - Sakai Trail Plan 2017
 - Visconsi Project Budget.pdf
 - 10.B **Wyatt Way Reconstruction Contract Award - Public Works, 10 Minutes**
11. **NEW BUSINESS**

- 11.A Ordinance No. 2020-06, Amending the 2020 Budget to Provide Funding for Work Funded in 2019 but to be Performed in 2020 - Finance, 10 Minutes**
Ordinance No. 2020-06 Amending the 2020 Budget to Carry Forward 2019 Items.docx

12. CONSENT AGENDA

- 12.A Agenda Bill for Consent Agenda, 5 Minutes**

13. COMMITTEE REPORTS

14. FOR THE GOOD OF THE ORDER

15. ADJOURNMENT

GUIDING PRINCIPLES

Guiding Principle #1 - Preserve the special character of the Island, which includes downtown Winslow's small town atmosphere and function, historic buildings, extensive forested areas, meadows, farms, marine views and access, and scenic and winding roads supporting all forms of transportation.

Guiding Principle #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.

Guiding Principle #3 - Foster diversity with a holistic approach to meeting the needs of the Island and the human needs of its residents consistent with the stewardship of our finite environmental resources.

Guiding Principle #4 - Consider the costs and benefits to Island residents and property owners in making land use decisions.

Guiding Principle #5 - The use of land on the Island should be based on the principle that the Island's environmental resources are finite and must be maintained at a sustainable level.

Guiding Principle #6 - Nurture Bainbridge Island as a sustainable community by meeting the needs of the present without compromising the ability of future generations to meet their own needs.

Guiding Principle #7 - Reduce greenhouse gas emissions and increase the Island's climate resilience.

Guiding Principle #8 - Support the Island's Guiding Principles and Policies through the City's organizational and operating budget decisions.



City Council meetings are wheelchair accessible. Assisted listening devices are available in Council Chambers. If you require additional ADA accommodations, please contact the City Clerk's Office at 206-780-8604 or cityclerk@bainbridgewa.gov by noon on the day preceding the meeting.



CITY OF
BAINBRIDGE ISLAND

Memorandum

Date: 1/31/2020
To: City Council
From: Morgan Smith, City Manager
Subject: Pending City Council Topics

The table below provides a list of City Council topics that are currently ready for Council consideration but have not yet been scheduled for a Council meeting. Some notes are provided to indicate to what degree the topic is time-sensitive, etc.

TOPIC	NOTES
BIMPRD proposal to manage City Dock	Suggest schedule in Q1 in order to reach decision ahead of planned RFP process. In the absence of any changes, City will issue RFP in Q3 to cover City Dock services after current agreement expires (12/31/20)
Ethics Program follow-up question	Discussion to meet Q4-2019 commitment to address question on what should happen in the event procedures are not followed.
Options for City Academy and Quarterly programs	Information developed to respond to Council request to City Manager from May, 2019 Council retreat.



CITY OF
BAINBRIDGE ISLAND

Memorandum

Date: 1/31/2020
To: City Council
From: Morgan Smith, City Manager
Subject: Proposed Future City Council Topics

The table below provides a list of potential future City Council topics that have been identified by one or more councilmembers.

TOPIC
\$15 minimum wage
Rights of Nature ordinance
Packaging ordinance
Islandwide 25 mph speed limit
Tenant policies for rental properties
Requirement for on-site manager for short-term rental units
Street Tree program



CITY OF
BAINBRIDGE ISLAND

City Council Study Session Agenda Bill

MEETING DATE: February 4, 2020

ESTIMATED TIME: 10 Minutes

AGENDA ITEM: (7:00 PM) Council February 8 Retreat Agenda - Mayor Schneider,

SUMMARY: Council will discuss the agenda for the Council retreat on February 8.

AGENDA CATEGORY: Discussion

PROPOSED BY: City Council

RECOMMENDED MOTION: Discussion

STRATEGIC PRIORITY: Good Governance

FISCAL IMPACT:

Amount:	
Ongoing Cost:	
One-Time Cost:	
Included in Current Budget?	

BACKGROUND:

ATTACHMENTS:

[Special City Council Meeting February 8, 2020](#)

FISCAL DETAILS:

Fund Name(s):

Coding:



CITY OF
BAINBRIDGE ISLAND

**SPECIAL CITY COUNCIL MEETING
SATURDAY, FEBRUARY 08, 2020**

BAINBRIDGE ISLAND CITY HALL
280 MADISON AVENUE N.
BAINBRIDGE ISLAND, WASHINGTON

AGENDA

1. **CALL TO ORDER / ROLL CALL - 9:00 AM**
2. **CITY COUNCIL DISCUSSION**
 - 2.A **(9:05 AM) Role of the Mayor and Deputy Mayor, 20 Minutes**
 - 2.B **(9:25 AM) Council Procedural Rules, 60 Minutes**
 - Mayor Powers in BIMC Complete List.pdf
 - Mayoral Powers Examples in BIMC and GM-Appendix 1.pdf
 - Mayoral Powers.pdf
 - Council Rules of Order Analysis 01-16-20.pdf
 - Decorum in Debate-Council Rules of Order.pdf
 - Four Simple Rules of Parliamentary Procedure.pdf
 - MRSC Guide to RONR.pdf
 - 2.C **(10:25 AM) Discuss Role of Council Liaisons, 15 Minutes**
 - Councilmember Liaison Job Description draft 12-3-19.docx
3. **ADJOURNMENT - 12:00 PM**

GUIDING PRINCIPLES

Guiding Principle #1 - Preserve the special character of the Island, which includes downtown Winslow's small town atmosphere and function, historic buildings, extensive forested areas, meadows, farms, marine views and access, and scenic and winding roads supporting all forms of transportation.

Guiding Principle #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.

Guiding Principle #3 - Foster diversity with a holistic approach to meeting the needs of the Island and the human needs of its residents consistent with the stewardship of our finite environmental resources.

Guiding Principle #4 - Consider the costs and benefits to Island residents and property owners in making land use decisions.

Guiding Principle #5 - The use of land on the Island should be based on the principle that the Island's environmental resources are finite and must be maintained at a sustainable level.

Guiding Principle #6 - Nurture Bainbridge Island as a sustainable community by meeting the needs of the present without compromising the ability of future generations to meet their own needs.

Guiding Principle #7 - Reduce greenhouse gas emissions and increase the Island's climate resilience.

Guiding Principle #8 - Support the Island's Guiding Principles and Policies through the City's organizational and operating budget decisions.



City Council meetings are wheelchair accessible. Assisted listening devices are available in Council Chambers. If you require additional ADA accommodations, please contact the City Clerk's Office at 206-780-8604 or cityclerk@bainbridgewa.gov by noon on the day preceding the meeting.



CITY OF
BAINBRIDGE ISLAND

City Council Study Session Agenda Bill

MEETING DATE: February 4, 2020

ESTIMATED TIME: 10 Minutes

AGENDA ITEM: (7:10 PM) Update on the Development Moratorium - Planning,

SUMMARY: The Council approved Ordinance 2019-26 on September 24, 2019 that extended the moratorium as it was for two additional months, and extended it further to April 3, 2020 in a more narrow form related to affordable housing and inclusionary zoning. See attached Work Program Status Report, Ordinance No. 2019-26, and moratorium summary.

AGENDA CATEGORY: Discussion

PROPOSED BY: Planning & Community Development

RECOMMENDED MOTION: Discussion.

STRATEGIC PRIORITY: Green, Well-Planned Community

FISCAL IMPACT:

Amount:	
Ongoing Cost:	
One-Time Cost:	
Included in Current Budget?	

BACKGROUND:

City staff have been working to address the issues identified in the development moratorium (Ordinance No. 2018-02, amended by Ordinance Nos. 2018-03, 2018-05, 2018-09, 2018-14, 2018-23, 2018-41, 2019-10 and 2019-26). On September 24, 2019, the City Council approved new subdivision regulations (Ordinance 2019-03) and design guidelines (Ordinance 2019-25), and extended the development moratorium (Ordinance No. 2019-26) in order to address affordable housing. See attached Work Program Status Report, Ordinance No. 2019-10, and summary.

ATTACHMENTS:

[Moratorium Update Abbreviated](#)

[Moratorium Extension Handout Final 100419](#)

[Ordinance No. 2019-26 Extending the Development Moratorium Approved 092419](#)

FISCAL DETAILS:

Fund Name(s):

Coding:

Moratorium on Accepting Certain Development Applications: ABBREVIATED Work Program Status Report – [January 27, 2020](#)

Moratorium Topic	Status	Timeline
Critical Areas Ordinance (CAO)	Incomplete.	The City received a response from the Dept. of Ecology (DOE) on December 9, 2019. DOE determined that the amendment is largely consistent but have identified elements that appear inconsistent with applicable laws and rules. Staff will return to Council on February 18, 2020 to discuss Ecology's inconsistent elements before beginning the legislative process to update the SMP to integrate the CAO.
Status on January 27, 2020:	Complete: CAO update effective outside shoreline jurisdiction. Incomplete: Adoption of the new CAO within the SMP.	
Moratorium Topic	Status	Timeline
Subdivisions	Complete.	A public hearing with the City Council was held on August 27, 2019, with a second held on September 24, 2019. After closing the hearing, the City Council approved Ordinance 2019-03.
Status on January 27, 2020:	Complete: Ordinance 2018-20 approved by the City Council on December 11, 2018, related to revisions to land use review procedures for major projects, including subdivisions. New subdivision standards and design guidelines were approved on September 24, 2019 (Ordinance 2019-03). Subdivisions are now able to be submitted citywide. The City amended the Administrative Manual to incorporate the changes in the subdivision requirements on December 10, 2019. The City is working on a handbook to assist the public in understanding the new regulations.	
Moratorium Topic	Status	Timeline
Design Guidelines Update (related to Site Plan and Design Review and Conditional Use Permits).	Complete.	On September 24, the City Council held a public hearing on Ordinance 2019-25, adopting new design guidelines, Design for Bainbridge. After closing the public hearing, the City Council approved Ordinance 2019-25.
Status on January 27, 2020:	Complete: Adopted new Design for Bainbridge design guidelines on September 24, 2019.	

Moratorium on Accepting Certain Development Applications: ABBREVIATED Work Program Status Report – [January 27, 2020](#)

Moratorium Topic	Status	Timeline
Review Process for Land Use Permits (related to Subdivisions, Site Plan and Design Review, and Conditional Use Permits).	Complete	Ordinance 2019-24 revising the Decision Criteria for SPRs and CUPs was discussed by the City Council on November 26 and approved by the City Council on December 10, 2019.
<p>Status on January 27, 2020:</p> <p>Complete: Ordinance 2018-20 approved by the City Council on December 11, 2018, related to new roles and responsibilities for the Planning Commission and Design Review Board, review procedures for subdivisions, site plan and design review, and conditional use permits, and revisions to the legislative review process for amending the BIMC. Ordinance 2019-24 revising Chapter 2.16 BIMC related to decision criteria for site plan and design review and conditional use permits was approved by the City Council on December 10, 2019.</p>		
Moratorium Topic	Status	Timeline
Affordable Housing	Incomplete.	<p>Inclusionary Zoning: The City Council had a presentation from ECONorthwest on September 17, 2019 to discuss inclusionary zoning (IZ) regulations and a multifamily property tax exemption program (MFTE). The Council asked for additional information, and another study session is scheduled for on February 4, 2020.</p> <p>Common Ownership for ADUs: The City Council completed their policy discussion regarding common ownership of ADUs at their October 22, 2019 meeting.</p> <p>The Planning Commission discussed Ordinance 2019-09 on December 12, 2019 and held a public hearing on the ordinance (now Ordinance 2020-02) on January 9, 2020. The Planning Commission formed a subcommittee to further discuss a variety of ADU regulations, and will report back to the full Planning Commission for additional review and discussion before making a recommendation to the City Council. Staff anticipates that Ordinance 2020-02 will be discussed by the City Council starting in March 2020.</p>

Moratorium on Accepting Certain Development Applications: ABBREVIATED Work Program Status Report – [January 27, 2020](#)

Moratorium Topic	Status	Timeline
		<p>Recreational Vehicles as dwellings & Tiny Home Communities: The City Council last discussed RV's and tiny home communities at their October 22, 2019 meeting. The City Council will further discuss developing policy for both RVs and tiny home communities in Q2 2020. Any policy direction from the City Council will then be forwarded to the Planning Commission as part of the legislative process.</p>
<p>Status on January 27, 2020:</p>	<p>Complete: City Council discussion and endorsement of Priority and Quick Wins recommendations from the AHTF Report and City Manager's approach for implementation. Incomplete: Adoption of revised ADU ordinance, RV's and tiny home community's ordinance and IZ and MFTE regulations. The PC is continuing their discussion on ADU's. RV and tiny home communities will be discussed with Council in Q2 2020. A second City Council study session on IZ and the MFTE is scheduled for February 4, 2020.</p>	

October 2, 2019

DEVELOPMENT MORATORIUM SUMMARY: Effective beginning January 9, 2018 through December 3, 2019. A narrowed development moratorium will be in effect beginning December 4, 2019 until April 3, 2020 (Ordinance No. 2018-02, amended by Ordinance Nos. 2018-03, 2018-05, 2018-09, 2018-14, 2018-23, 2018-41, 2018-43, 2019-10 and 2019-26).

On September 24, 2019 the City Council approved Ordinance 2019-26, which extended the development moratorium **AS IS through December 3, 2019**. On December 4, the development moratorium will be narrowed, but in effect until April 3, 2020. The development moratorium before and after December 3, 2019 is described below.

Development Activity PROHIBITED During the Moratorium (through December 3)

- A. All applications for new short subdivisions (BIMC 2.16.070), except two-lot short subdivisions in which there is an existing single-family residence, new preliminary long subdivisions (BIMC 2.16.125), and new large lot subdivisions (BIMC 2.16.080).
- B. 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. Provided, that the moratorium does not apply to Major Site Plan and Design Review and Major Conditional Use Permit proposals for properties located in the Mixed-Use Town Center/Central Core Overlay District or the Business/Industrial District.

EXCEPTIONS to the Above Development Activities Prohibited During the Moratorium:

1. 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. and Table 2.16.020.S-1, and
2. Permits and approvals for government facilities and structures; educational facilities and preschools; wireless communication facilities; and emergency medical and disaster relief facilities.

Development Activity PROHIBITED During the Narrowed Moratorium (December 4, 2019-April 3, 2020)

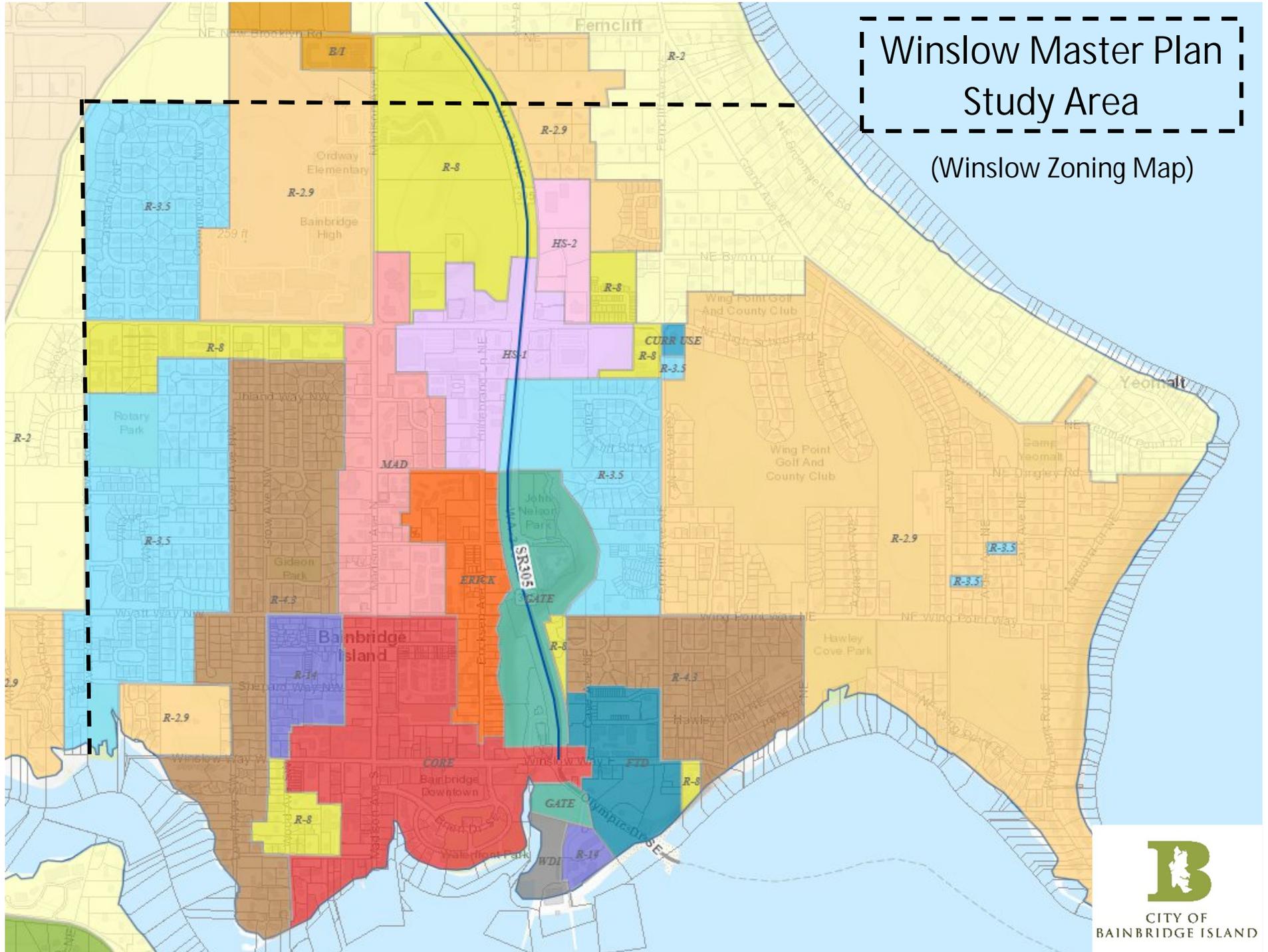
Subject to the exclusions below, the moratorium shall apply to Major Site Plan and Design Review and Major Conditional Use Permit proposals that are for development within the Winslow Master Plan Study Area (see map on next page) and did not, before the effective date of the moratorium, have a pre-application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

EXCEPTIONS to the Above Development Activities Prohibited During the Narrowed Moratorium:

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. and Table 2.16.020.S-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.

EXHIBIT B



Winslow Master Plan
Study Area

(Winslow Zoning Map)

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 24th day of September, 2019.

APPROVED by the Mayor this 24th day of September, 2019.



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
Subdivision Standards	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).
Design Guidelines	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).
Conditional Use / Site Plan Decision Criteria	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).
Affordable Housing	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.



CITY OF
BAINBRIDGE ISLAND

City Council Study Session Agenda Bill

MEETING DATE: February 4, 2020

ESTIMATED TIME: 10 Minutes

AGENDA ITEM: (7:20 PM) Green Building Update - Planning,

SUMMARY: Monthly report to the Council on the status of establishing the green building task force.

AGENDA CATEGORY: Report

PROPOSED BY: Planning & Community Development

RECOMMENDED MOTION: Discussion only.

STRATEGIC PRIORITY: Green, Well-Planned Community

FISCAL IMPACT:

Amount:	
Ongoing Cost:	
One-Time Cost:	
Included in Current Budget?	

BACKGROUND:

ATTACHMENTS:

[Staff Memo January Update 2020 01 28](#)

FISCAL DETAILS:

Fund Name(s):

Coding:



Department of Planning and Community Development

Memorandum

Date: January 28, 2019
To: City Manager
City Council
From: Heather Wright
Planning Director
Subject: Green Building Update

I. JANUARY 2020 UPDATE

- On January 8, the City Council appointed Joe Deets and Michael Pollock as the Council member Liaisons to the task force.
- On January 16, the City posted a request for nine (9) green building experts to join the Green Building Task Force. The deadline for submittal is Friday, January 31.
- As of January 28, 2020, the City has received seven (7) applications.

II. Next Steps

- The City will interview applicants in February.
- A green building task force kick off meeting will be held at the end of February or early March 2020.



CITY OF
BAINBRIDGE ISLAND

City Council Study Session Agenda Bill

MEETING DATE: February 4, 2020

ESTIMATED TIME: 10 Minutes

AGENDA ITEM: (7:30 PM) Update on Vision 2050 and Population Allocation - Planning,

SUMMARY: Update.

AGENDA CATEGORY: Discussion

PROPOSED BY: City Council

RECOMMENDED MOTION: Discussion.

STRATEGIC PRIORITY: Green, Well-Planned Community

FISCAL IMPACT:

Amount:	
Ongoing Cost:	
One-Time Cost:	
Included in Current Budget?	

BACKGROUND: The Puget Sound Regional Council (PSRC) Vision 2050 is a regional growth strategy for the four-county central Puget Sound region (King, Pierce, Snohomish, and Kitsap counties). Within the report, there are projected employment and population growth numbers. PSRC is planning for 1.8 million more people and 1.2 million jobs by 2050.

There has been one conversation between elected officials at the Kitsap Regional Coordinating Council (KRCC, October 2019) to determine the amount of growth that could be absorbed based on Vision 2050's growth projections and the results of that meeting are included.

ATTACHMENTS:

[Staff Memo on PSRC Vision 2050 Plan 20200131](#)

FISCAL DETAILS: N/A

Fund Name(s):

Coding:

Memorandum

Date: January 31, 2020
To: City Manager
City Council
From: Heather Wright
Planning Director
Subject: Update on Vision 2050 and Population Forecast – PSRC Vision 2050 Plan

I. Puget Sound Regional Council BACKGROUND

The Puget Sound Regional Council (PSRC) is the regional planning organization for the four-county central Puget Sound region (King, Pierce, Snohomish and Kitsap counties). PSRC conducts long-range planning (20-30 years in the future) for growth management, transportation, and economic development. It also collects regional data on demographics, housing, unemployment, building permits, and traffic counts, and analyzes to inform public policy.



II. VISION 2050 BACKGROUND

PSRC began their Vision 2050 work in 2017 with scoping, research and planning in 2018 and draft SEPA review in 2019. On December 5, 2019, the Growth Management Hearing Board acted unanimously to recommend VISION 2050 for adoption. On January 16, 2020, the Executive Board received the Vision 2050 plan and they are currently in the process of review. Vision 2050 is scheduled to be acted on by PSRC's General Assembly in May 2020.

III. FORECAST POPULATION & JOBS FOR BAINBRIDGE

A new regional forecast shows expected employment and population growth through 2050. PSRC is planning for 1.8 million more people and 1.2 million jobs by 2050. Planning for 2050 to inform regional and local planning is a fundamental component of the update.

The City of Bainbridge Island is included as a High Capacity Transit Community along with Kingston, Port Orchard and Port Orchard UGA and Poulsbo and Poulsbo UGA. High Capacity Transit Communities include cities connected to existing or planned light rail, commuter rail, ferry, streetcar and bus rapid transit facilities.

The Draft Preferred Alternative for Kitsap Counties High Capacity Transit communities forecasts population growth by 36% or by 34,000 between the years of 2017 to 2050 and employment growth by 32% or by 18,000 between the years of 2017 to 2050.

FIGURE 1 - POPULATION GROWTH 2017-50, DRAFT PREFERRED ALTERNATIVE

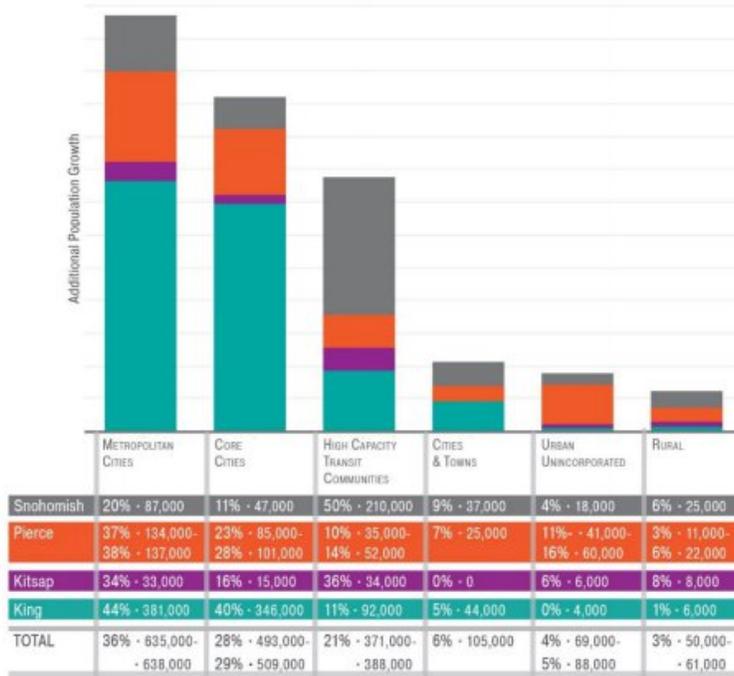
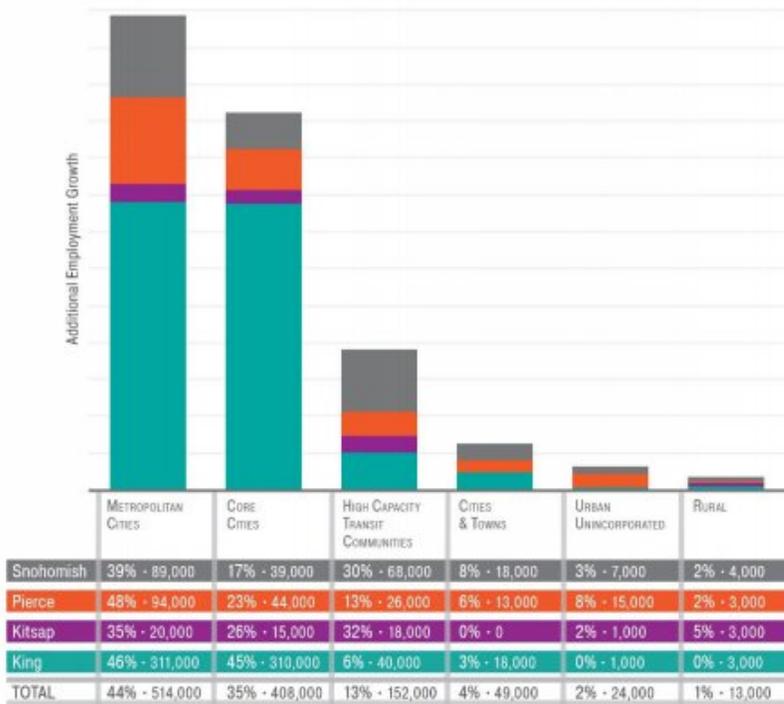


FIGURE 2 - EMPLOYMENT GROWTH 2017-50, DRAFT PREFERRED ALTERNATIVE



The exact percentage of growth that Bainbridge Island will experience will be informed by the next census update, the next adoption of the Comprehensive Plan and an agreed upon distribution of the 36% by the 3 other HCTC's (Poulsbo, Port Orchard, Kingston (Kitsap County)).

IV. LOCAL CONVERSATION UPDATE

The first consensus exercise to accommodate the predicted population projects from PSRC's Vision 2050 were discussed by the elected officials at the Kitsap Regional Coordinating Council (KRCC) on October 25, 2019.

The KRCC Board held a table top exercise focused on North, Central and South Kitsap County where each group was to determine the amount of growth that would be absorbed to meet the 2050 Growth Allocations. There was quite a bit of consensus amongst the groups about the amount to be allocated between the HCT's.

For Bainbridge Island, it was proposed and generally accepted that Bainbridge Island would potentially accommodate 4,500 of the 34,000 population by 2050.

To understand the potential amount of growth, it is helpful to have our current population estimate and the amount that we have already prepared to accommodate in our 2036 Comprehensive Plan.

- The 2017 Comprehensive Plan plans for a population of 28,660 residents in 2036. This amount is 4,810 above the 2015 census (23,880) that was the basis of the Comprehensive Plan (28,660 – 23,880 = 4,810).
- If the Island were to accommodate 4,500 additional residents by 2050, the City may need to adjust for an additional 686 residents during our next comprehensive plan update. This is based on the current 2019 census estimate for the Island at 24,846 (28,660 – 24,846).

Again, this was the first of many conversations that will be held in the years leading up to our next Comprehensive plan update, that is scheduled for 2024.



CITY OF
BAINBRIDGE ISLAND

City Council Study Session Agenda Bill

MEETING DATE: February 4, 2020

ESTIMATED TIME: 10 Minutes

AGENDA ITEM: (7:40 PM) Sustainable Transportation Plan Update - Public Works,

SUMMARY: This update will focus on the Council's interest in selecting up to three (3) Councilmembers to be the liaisons to the Sustainable Transportation Task Force, and to identify the broad duties of those liaisons, which will at a minimum should include:

- reviewing applicants to the task force and recommending appointments to the full Council.
- attending meetings of the task force.

AGENDA CATEGORY: Discussion

PROPOSED BY: Public Works

RECOMMENDED MOTION: I move to appoint Councilmember _____, Councilmember _____, and Councilmember _____ to be the Council liaisons to the Sustainable Transportation Task Force.

STRATEGIC PRIORITY: Reliable Infrastructure and Connected Mobility

FISCAL IMPACT:

Amount:	N/A
Ongoing Cost:	N/A
One-Time Cost:	N/A
Included in Current Budget?	

BACKGROUND: This Agenda item is the first of what will become biweekly updates to the Council on the status of the Sustainable Transportation Plan. This update will focus on the Council's interest in selecting up to three (3) Councilmembers to be the liaisons to the Sustainable Transportation Task Force, and to identify the broad duties of those liaisons.

An open solicitation of Task Force candidates closed on January 31, 2020.

City staff are developing a standard format for future biweekly updates that will include general information about the project, as well as key meeting dates, decision points, and a status update on the project scope and schedule.

ATTACHMENTS:

FISCAL DETAILS: N/A

Fund Name(s):

Coding:



CITY OF
BAINBRIDGE ISLAND

City Council Study Session Agenda Bill

MEETING DATE: February 4, 2020

ESTIMATED TIME: 10 Minutes

AGENDA ITEM: (7:50 PM) State Route 305 / Day Road Roundabout Project Update - Public Works,

SUMMARY:

This item is an update and discussion of WSDOT plans for a roundabout at State Route 305 and Day Road.

AGENDA CATEGORY: Discussion

PROPOSED BY: Public Works

RECOMMENDED MOTION: Discussion only.

STRATEGIC PRIORITY: Reliable Infrastructure and Connected Mobility

FISCAL IMPACT:

Amount:	
Ongoing Cost:	
One-Time Cost:	
Included in Current Budget?	

BACKGROUND:

The WSDOT State Route 305 Improvement Project is guided by a "working group" that includes state and local elected and other leadership representation from Kitsap County, the City of Bainbridge Island, the City of Poulsbo, and Kitsap Transit. In late November 2019, the group met to discuss moving forward with a suite of improvement projects for the corridor that, among others, includes a roundabout at the SR305 intersection with Day Road. At that meeting, the group discussed potentially shelving the SR305/Day Road roundabout given the anticipated stormwater costs, the impacts on the adjacent Land Trust property on the southwest corner, and other uncertainties related to the the right-of-way acquisition.

In lieu of shelving the improvements, the working group allowed all of the interested parties (WSDOT, COBI, and the Land Trust) approximately 60 days to work through the design elements of the project to determine if a cost effective and mutually agreeable solution to the project challenges could be developed prior to the next working group meeting, which is scheduled for January 31, 2020. For this agenda item, the staff will provide an update to the Council on the outcome of the January 31 meeting.

ATTACHMENTS:

FISCAL DETAILS: N/A

Fund Name(s):

Coding:



CITY OF
BAINBRIDGE ISLAND

City Council Study Session Agenda Bill

MEETING DATE: February 4, 2020

ESTIMATED TIME: 60 Minutes

AGENDA ITEM: (8:00 PM) Discussion of Possible Inclusionary Zoning / Multifamily Tax Exemption Programs - Planning,

SUMMARY: The City Council will continue to discuss information and options for adopting inclusionary zoning and/or MFTE programs. This is an opportunity for the Council to ask questions about the economic analysis and recommendations from consultant ECONorthwest, and provide direction about future work on adopting an inclusionary zoning and/or MFTE program. The Council's last discussion of the programs took place at the September 17, 2019 Council meeting.

There is an updated presentation from ECONorthwest with additional information to inform the Council's discussion about changes that would be needed to the City's development code in order for an inclusionary zoning or MFTE program to be successful. Additional background information on these two programs from the first phase of ECONorthwest work (2018- Feb. 2019) and the Puget Sound Regional Council are also attached as background information.

AGENDA CATEGORY: Discussion

PROPOSED BY: Planning & Community Development

RECOMMENDED MOTION: Discuss the information presented by ECONorthwest and whether the City should further consider adopting Inclusionary Zoning and/or Multifamily Tax Exemption (MFTE) programs. Provide direction regarding if/where these programs should be considered to apply (i.e., what zoning districts).

STRATEGIC PRIORITY: Green, Well-Planned Community

FISCAL IMPACT:

Amount:	
Ongoing Cost:	
One-Time Cost:	
Included in Current Budget?	

BACKGROUND: Increasing, affordable housing is a goal that permeates several elements of the City's Comprehensive Plan. In addition, on November 1, 2017, the Affordable Housing Task Force voted unanimously to recommend to the City Council that the City pursue an inclusionary zoning program.

On June 12, 2018, the Council approved a professional services agreement with ECONorthwest to provide economic analysis and a feasibility study regarding a new inclusionary zoning program and revisions to the City's transfer of development rights program. Between June and December 2018, the Council held three study

sessions on this project covering methodology, data gathering, and assumptions. The previous project ended with a final report and presentation to the Council on February 19, 2019 (attached).

At that meeting, the Council discussed the desire to adopt an MFTE program, and the pros and cons regarding the 8-year and 12-year MFTE options. The Council also discussed whether to adopt inclusionary zoning throughout the City's designated centers, or only in specific zoning districts. In the attached presentation, ECONorthwest has provided additional information for specific zoning districts in order to support the Council's policy discussion of these two programs - both important market based tools to support additional affordable housing.

ATTACHMENTS:

[Affordable Housing Presentation 20200130](#)

[2019 Bremerton-Silverdale MSA HUD Median Income Table.pdf](#)

[PSRC Inclusionary Zoning Summary.pdf](#)

[PSRC MFTE Summary.pdf](#)

[Sept 17 2019 ECONorthwest Council Briefing Memo](#)

[February 2019 Transfer of Development Rights and Inclusionary Zoning Assessment \(ECONorthwest & Forterra\)](#)

FISCAL DETAILS: N/A - discussion only

Fund Name(s):

Coding:

Bainbridge Island Inclusionary Housing

Density Bonus
and
Multifamily Tax Exemption

ECONorthwest
ECONOMICS • FINANCE • PLANNING

Council Direction from September Briefing

- Desire to allow more housing and affordable housing production
- Request for more detailed provisions on changes to the code:
 - Affordable housing production as part of a voluntary density/height bonus program
 - Levels of affordable housing set-aside and depth of affordability (i.e. 10% and low-income – 80%)
- Request affordability impact by using MFTE

Council Direction from September Briefing

- Requested information in three areas of the island:
 - Winslow area – higher density zones
 - Central CORE Overlay
 - Gateway Overlay
 - Ferry Terminal Overlay
 - Mid-island – mid-density zones
 - High School Road District (I/II)
 - Madison Avenue Overlay
 - Ericksen Avenue Overlay
 - Neighborhood centers – lower density
 - Lynwood Center and NC/R-12
 - Island Center
 - Rolling Bay

Current Affordability Approach

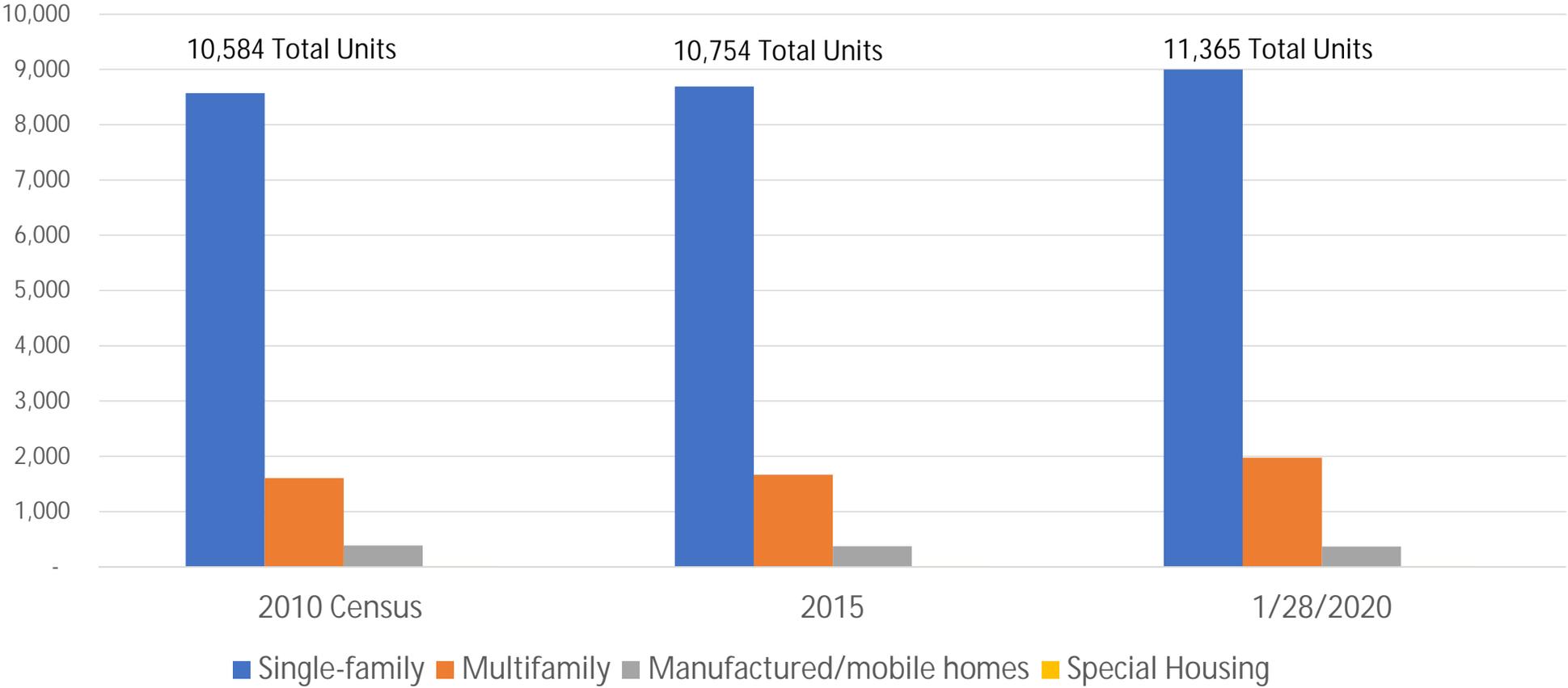
- What is inclusionary zoning?
 - Inclusionary housing uses regulatory and other incentives to get housing projects to set aside homes for affordability purposes.
 - The homes are dedicated to low- and moderate-income households.
- What is MFTE?
 - The multifamily property tax exemption uses a time limited property tax exemption (residential portion)
 - The 12-year program in WA requires 20% of homes set aside to low- and moderate-income households.

Current Affordability Approach

- Current City voluntary inclusionary affordable housing (since 2005):
 - Allows affordability at a range between 50-80% AMI, generally higher set-asides are required (up to 50% of units)
 - No projects have used the code to deliver affordable housing projects under this program
- City HDDP program has produced 47 units since 2009
- The city does not have an MFTE program

Housing on Bainbridge Island

Housing Units on Bainbridge Island



Sources: 2010 Census, WA State Office of Financial Management & City Permit Data

Note: 15 Special Housing Units Since 2010

Housing on Bainbridge Island

Existing Affordable Housing on Bainbridge Island

	Owner	# Units	Housing Type	# of units with rental subsidy		Owner	# Units	Housing Type	# of units with rental subsidy
Island Home	Housing Resources Bainbridge (HRB)	10	Individuals & Families	0	550 Madison	550 Madison LLC/ Partnership w HRB	13	Individuals & Families	-
Village Home	HRB	11	Individuals & Families	0	Finch Place Apts.	Housing Kitsap	29	Senior/ Disabled	20
Western View Terrace (2 of 7 Buildings)	HRB	8	Individuals & Families	0	Virginia Villa	Virginia Villa Apt. (Privately Owned)	40	Senior/ Disabled	20
Janet West	HRB	9	Individuals & Families	0	Winslow Arms	Edgewood Villa Associates (Privately Owned)	60	Senior/ Disabled Section 8	60
Island Terrace	Winslow Terrace LLC (Privately Owned)	48	Individuals & Families	19	HRB Homeownership Program: Ferncliff Village (40) & Sparrows (2)	HRB	42	Individuals & Families	NA
Rhododendron	Housing Kitsap	50	Individuals & Families	48	The Walk 2 of 5 AH units completed	Paditu LLC (Privately Owned)	2	Individuals & Families	0

TOTAL: 322 Units

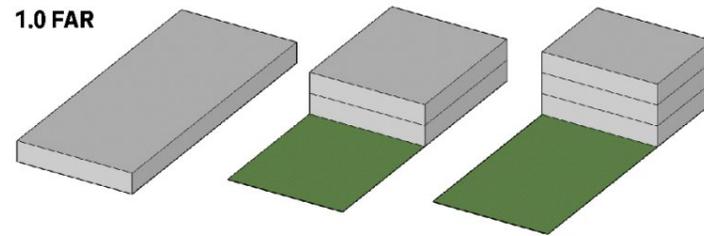
Zone-Specific Recommendations

FAR Definition

- Floor Area Ratio (FAR). “Floor area ratio” is a figure that expresses the total floor area as a multiple of the lot area.
- Determined by dividing the floor area of all buildings on a lot by the lot area prior to removal of lot area for dedication.

Illustrations of FAR Limits

1.0 FAR

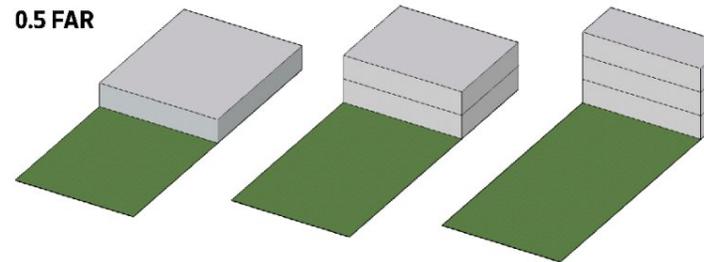


1 story
(100% lot coverage)

2 stories
(50% lot coverage)

3 stories
(33% lot coverage)

0.5 FAR



1 story
(50% lot coverage)

2 stories
(25% lot coverage)

3 stories
(17% lot coverage)

Tested Proposed Inclusionary Policy

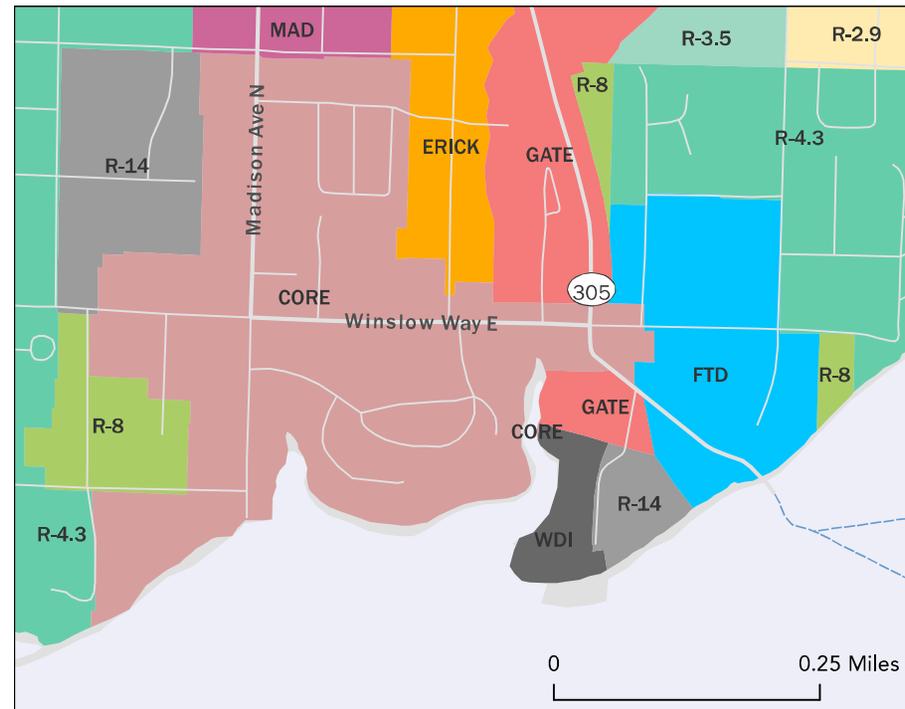
- How many units would be set aside for affordable use (percent of all units in building)?
- How much can rent be reduced (1-bedroom units)?
- What FAR and Height Maximums would necessary
- What is the impact of MFTE use on deeper affordability?

Winslow Recommendations

Winslow Areas: Higher-Density

Winslow Areas

- Central CORE Overlay
- Gateway Overlay
- Ferry Terminal Overlay



Winslow Areas: Higher Density

- Projects are not financially feasible at current bonus provisions
- MFTE can not make them feasible
- Higher densities are required to make projects feasible and support affordable housing

No MFTE	Current Base (free land)	Current Base (land threshold)	Current Bonus (free land)	Current Bonus (land threshold)	New Bonus (free land)	New Bonus (land threshold)
Gateway Overlay	Yes	No	No	No	Yes	Yes
Ferry Terminal Overlay	Yes	No	No	No	Yes	Yes
Central Core Overlay	Yes	No	No	No	Yes	Yes

MFTE - 12 Year	Current Base (free land)	Current Base (land threshold)	Current Bonus (free land)	Current Bonus (land threshold)	New Bonus (free land)	New Bonus (land threshold)
Gateway Overlay	Yes	No	No	No	Yes	Yes
Ferry Terminal Overlay	Yes	No	No	No	Yes	Yes
Central Core Overlay	Yes	No	No	No	Yes	Yes

Winslow Area: Higher Density

Current Land Use	Current Bonus Max	Proposed Bonus Max
		
<p>Base: Core: 0.4 FAR, 35 feet Gateway: 0.5 FAR, 35 feet FT: 0.4 FAR, 35 feet</p>	<p>Current Max: Core: 1.5 FAR, 45 feet (mixed use) Gateway: 1.0 FAR, 45 feet FT: 1.3 FAR, 45 feet</p>	<p>Proposed Max: Core: 4.5 FAR, 65 feet Gateway: 4.5 FAR, 65 feet FT: 4.5 FAR, 65 feet</p>
<p>Est. Housing Capacity: 300 units</p>	<p>Est. Housing Capacity: 650 units</p>	<p>Est. Housing Capacity: 4,050 units</p>
<p>Est. Affordable Capacity: n/a</p>	<p>Est. Affordable Capacity: Not feasible</p>	<p>Est. Affordable Capacity: 940</p>

Winslow Area: Higher Density

- Increased density bonus can deliver affordable housing units
- MFTE with with density bonus can deliver more affordable units at deeper affordability

MFTE - 12 Year	New Max FAR	New Max Height	Prototypical Project (units)	Set Aside (%)	Affordable Units	AMI Target	Tenure
Gateway Overlay	4.5	65	90	20%	18	70%	Rental
Ferry Terminal Overlay	4.5	65	180	20%	36	70%	Rental
Central Core Overlay	4.5	65	90	20%	18	70%	Rental

- A 'typical' project in the Central Core:
 - 90 units total
 - Without MFTE: 15% set aside for 80% AMI
 - With MFTE: 20% set aside for 70% AMI
- Over 20 years, these areas may create 400-670 units of the 4,050 unit capacity.

After reviewing Winslow:

Is there desire to direct staff to develop changes to implement affordability:

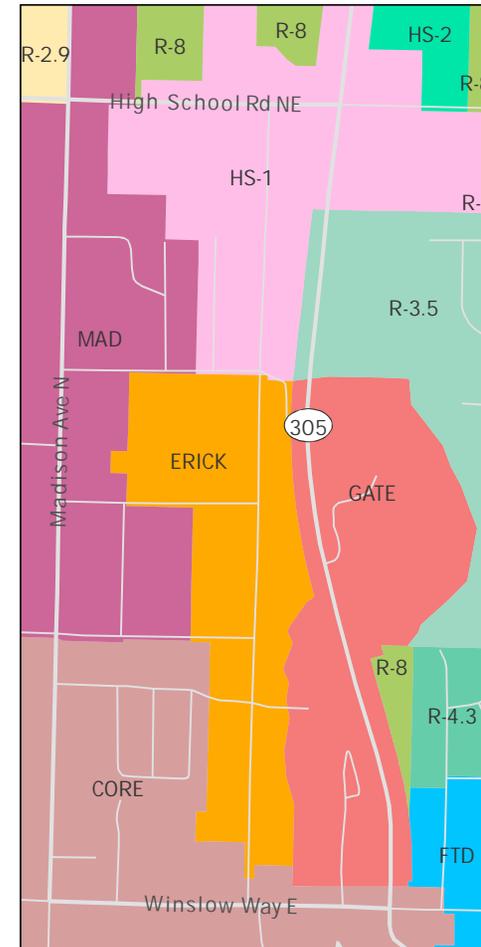
- Which zones or Where to implement IZ?
- An ordinance to develop an MFTE code?

Mid-Island Recommendations

Mid-Island Areas: Middle Density

Mid-Island Areas

- High School Road District (I/II)
- Madison Avenue Overlay
- Ericksen Avenue Overlay



Mid-Island Areas: Middle Density

- Projects are not financially feasible at current bonus provisions
- MFTE can not make them feasible
- Higher densities are required to make projects feasible and support affordable housing

No MFTE	Current Base (free land)	Current Base (land threshold)	Current Bonus (free land)	Current Bonus (land threshold)	New Bonus (free land)	New Bonus (land threshold)
High School Road District	Yes	No	No	No	Yes	Yes
Madison Avenue Overlay	Yes	No	No	No	Yes	Yes
Ericksen Avenue Overlay	Yes	No	No	No	Yes	Yes

MFTE - 12 Year	Current Base (free land)	Current Base (land threshold)	Current Bonus (free land)	Current Bonus (land threshold)	New Bonus (free land)	New Bonus (land threshold)
High School Road District	Yes	No	No	No	Yes	Yes
Madison Avenue Overlay	Yes	No	No	No	Yes	Yes
Ericksen Avenue Overlay	Yes	No	No	No	Yes	Yes

Mid-Island Areas: Middle Density

Current Land Use	Current Allowed Max	Proposed Max
		
<p>Base: HS Road: 0.3 FAR, 35 feet Madison: 0.4 FAR, 25 feet Ericksen: 0.3 FAR, 25 feet</p>	<p>Current Max: HS Road: 0.6 FAR, 45 feet Madison: 0.4 FAR, 35 feet Ericksen: 0.6 FAR, 35 feet</p>	<p>Proposed Max: HS Road: 3.0 FAR, 55 feet Madison: 3.0 FAR, 55 feet Ericksen: 3.0 FAR, 55 feet</p>
	<p>Est. Housing Capacity: 1,080 units</p>	<p>Est. Housing Capacity: 4,800 units</p>
		<p>Est. Affordable Capacity 1,176</p>

Mid-Island Areas: Middle Density

- Increased density bonus can deliver affordable housing units
- MFTE with with density bonus can deliver more affordable units at same affordability depth

No MFTE	New Max FAR	New Max Height	Prototypical Project (units)	Set Aside (%)	Affordable Units	AMI Target	Tenure
High School Road District	3	55	56	10%	6	80%	Rental
Madison Avenue Overlay	3	55	56	10%	6	80%	Rental
Ericksen Avenue Overlay	3	55	56	10%	6	80%	Rental

MFTE - 12 Year	New Max FAR	New Max Height	Prototypical Project (units)	Set Aside (%)	Affordable Units	AMI Target	Tenure
High School Road District	3	55	56	20%	12	80%	Rental
Madison Avenue Overlay	3	55	56	20%	12	80%	Rental
Ericksen Avenue Overlay	3	55	56	20%	12	80%	Rental

- A “typical” project in the High School District:
 - 56 units total
 - Without MFTE: 10% set aside for 80% AMI
 - With MFTE: 20% set aside for 80% AMI
- Over 20 years, these areas may create 480-790 units of the 4,800 unit capacity.

After reviewing Mid Island:

Is there desire to direct staff to develop changes to implement affordability:

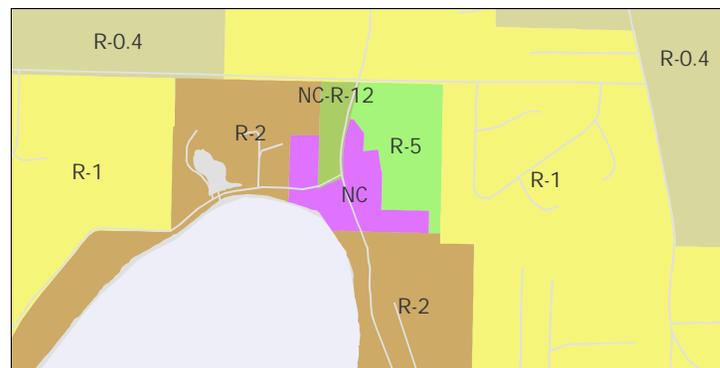
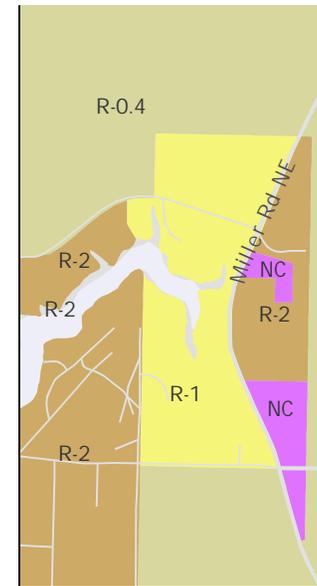
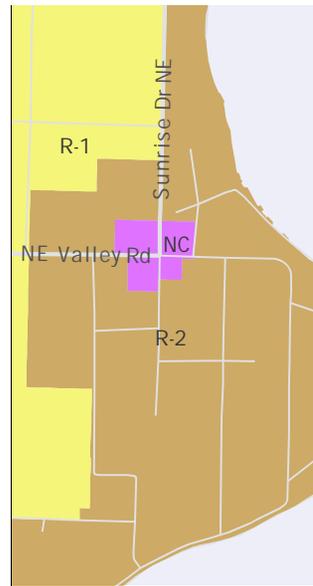
- Which zones or Where to implement IZ?
- An ordinance to develop an MFTE code?

Neighborhood Center Recommendations

Neighborhood Centers: Lower-Density

Three Neighborhood Centers

- Lynwood Center and NC/R-12
- Island Center
- Rolling Bay



Neighborhood Centers: Lower-Density

- Development can be feasible at current conditions, some challenges.
- MFTE can not make them more feasible
- Higher densities are required to make projects feasible and support affordable housing

No MFTE	Current Base (free land)	Current Base (land threshold)	Current Bonus (free land)	Current Bonus (land threshold)	New Bonus (free land)	New Bonus (land threshold)
Neighborhood Center	Yes	No	Yes	No	Yes	Yes
Neighborhood Center/R-12	Yes	No	Yes	No	Yes	Yes

MFTE - 12 Year	Current Base (free land)	Current Base (land threshold)	Current Bonus (free land)	Current Bonus (land threshold)	New Bonus (free land)	New Bonus (land threshold)
Neighborhood Center	Yes	No	Yes	No	Yes	Yes
Neighborhood Center/R-12	Yes	No	Yes	No	Yes	Yes

Neighborhood Centers: Lower-Density

Current Land Use	Current Allowed Max	Proposed Max
		
<p>Base: NC: 2 units/acre, 35 feet NC/R-12: 5 units/acre, 35 feet</p>	<p>Current Max: NC: 5 units/acre, 45 feet NC/R-12: 12 units/acre, 45 feet</p>	<p>Proposed Max: NC: 0.5 FAR, 45 feet NC/R-12: 3.0 FAR, 45 feet</p>
	<p>Est. Housing Capacity: 29 units</p>	<p>Est. Housing Capacity: 65 units</p>
		<p>Est. Affordable Capacity 12</p>

Neighborhood Centers: Lower-Density

- Increased density bonus can deliver affordable housing units
- MFTE with with density bonus can deliver more affordable units at deeper affordability depth
- Options for NC geared toward ownership affordability

No MFTE	New Max FAR	New Max Height	Prototypical Project (units)	Set Aside (%)	Affordable Units	AMI Target	Tenure
Neighborhood Center	0.5	Unchanged	10	10%	1	70%	Ownership
Neighborhood Center/R-12	3	45	40	10%	4	80%	Rental

MFTE - 12 Year	New Max FAR	New Max Height	Prototypical Project (units)	Set Aside (%)	Affordable Units	AMI Target	Tenure
Neighborhood Center	0.5	Unchanged	10	20%	2	80%	Ownership
Neighborhood Center/R-12	3	45	40	20%	8	70%	Rental

- A project in the NC/R-12:
 - 40 units total
 - Without MFTE: 10% set aside for 70% AMI
 - With MFTE: 20% set aside for 80% AMI
- Over 20 years, these areas may create 45-50 units of the 65 unit capacity

27

After reviewing Neighborhood Centers:

Is there desire to direct staff to develop changes to implement affordability:

- Which zones or Where to implement IZ?
- An ordinance to develop an MFTE code?



CITY OF
BAINBRIDGE ISLAND

CITY OF BAINBRIDGE ISLAND

2019 MEDIAN INCOME LIMITS BY HOUSEHOLD SIZE

BREMERTON-SILVERDALE MSA (HUD)

Maximum Income Limits by Category (BIMC 18.21.020)	Household Size							
	1	2	3	4	5	6	7	8
100% of Median Household Income	\$59,875	\$68,438	\$77,000	\$85,500	\$94,063	\$102,606	\$111,150	\$119,694
Extremely Low Income: ≤ 30% of Median Household Income	\$18,000	\$20,550	\$23,100	\$25,650	\$27,750	\$29,800	\$31,850	\$33,900
Very Low Income: 31% - 50% of Median Household Income	\$29,950	\$34,200	\$38,500	\$42,750	\$46,200	\$49,600	\$53,050	\$56,450
Low Income: 51% - 80% of Median Household Income	\$47,900	\$54,750	\$61,600	\$68,400	\$73,900	\$79,350	\$84,850	\$90,300
Moderate Income: 81% - 95% of Median Household Income	\$56,881	\$65,016	\$73,150	\$81,225	\$89,359	\$97,476	\$105,592	\$113,709
Middle Income: 96% - 120% of Median Household Income	\$71,850	\$82,126	\$92,400	\$102,600	\$112,876	\$123,127	\$133,380	\$143,633

HIP Tool: Inclusionary Zoning

HIP Tool: Inclusionary Zoning

Inclusionary zoning is a tool that stipulates that new residential development in certain zones include some proportion or number of affordable housing units, or meet some type of alternative compliance. In order to ensure that costs are offset, jurisdictions often increase the development rights (i.e., density) of a proposed project. Adopting this combination—mandatory affordable housing and increased density—into the local code a priori an actual development application distinguishes inclusionary zoning from other types of incentive zoning zoning may be applied in ownership and rental developments, single-family and multi-family zones, and can be tied to specific geographic areas. Jurisdictions should craft inclusionary zoning policies that best reflect the needs of their residents, paying close attention to details relating to program management and monitoring. In the state of Washington all units developed through an inclusionary zoning program must remain affordable for at least 50 years (RCW 36.70A.540).

Background

Mandatory inclusion of affordable housing in residential developments is a response to persistently high housing costs and the difficulty of building lower-cost market-rate housing in many areas due to high land prices, and is an affordability strategy designed to secure a public benefit from growth.

Jurisdictions may produce a **nexus study** to show the extent that new development generates a need for new affordable housing. Some jurisdictions choose mandatory programs over voluntary ones, based on conclusions that voluntary incentive programs face challenges in producing significant numbers of affordable housing units.

Before 2006 mandatory inclusionary housing requirements were used infrequently in Washington State due to concerns about takings challenges and the appearance of establishing a “tax.” However, amendments to the Growth Management Act in 2006 (RCW 36.70A.040) and other state laws allow jurisdictions to enact or expand affordable housing mandatory inclusionary zoning programs as long as they are tied to an upzone or other regulation changes that increases the area’s development capacity. For more detail, also see WAC 365-196-870.

Affordable housing must be mentioned explicitly as a public benefit to be rewarded with increased density, reduced parking, reduced fees or taxes or other incentives offered.

See density bonuses or incentive zoning for more information about state law, and voluntary inclusionary programs.

Tool Profile

Focus Areas

Project Types

Affordability Level

Housing Goal

HIP Tool: Multifamily Tax Exemption

HIP Tool: Multifamily Tax Exemption

A state law (RCW 84.14) helps cities attract residential development. Cities may exempt multifamily housing from property taxes in urban centers with insufficient residential opportunities. The city defines a residential target area or areas within an urban center; approved project sites are exempt from ad valorem property taxation on the residential improvement value for a period of eight or 12 years. The 12-year exemption requires a minimum level of affordable housing to be included in the development (at least 20% of the units or 100% if the building is solely owner-occupied). The eight-year exemption leaves the public benefit requirement—in both type and size—to the jurisdiction's discretion. The eight-year exemption carries no affordable housing requirement. Cities must pass an enabling ordinance to enact the MFTE and to allow applications for the exemption.

Background

What issues does a multifamily tax exemption (MFTE) address?

This tool encourages multifamily development and redevelopment in compact mixed-use districts (urban centers) where housing and affordable housing options are deficient. Through the multifamily tax exemption, a jurisdiction can incentivize dense and diverse housing options in urban centers lacking in housing choices or affordable units. MFTE can also apply to rehabilitating existing properties and redeveloping vacant or underused properties.

Where is the multifamily tax exemption most applicable?

Cities planning under the Growth Management Act (RCW 36.70a) that have designated urban centers with a deficiency of housing opportunities are eligible to implement this tool. In King, Pierce, Snohomish and Kitsap counties, cities must have at least 5,000 in population. Cities must designate eligible areas that contain urban centers. Urban centers—in the context of the MFTE-enabling legislation—have a particular meaning:

“...a compact identifiable district where urban residents may obtain a variety of products and services. An urban center must contain:

- a) Several existing or previous, or both, business establishments that may include but are not limited to shops, offices, banks, restaurants, governmental agencies;
- b) Adequate public facilities including streets, sidewalks, lighting, transit, domestic water, and sanitary sewer systems; and
- c) A mixture of uses and activities that may include housing, recreation, and cultural activities in association with either commercial or office, or both, use.” (RCW 84.14.010)

Based on the state law, designated districts are commercial or business districts with some mix of uses. Such areas may exist in downtowns, commercial corridors, or other intensively developed neighborhoods. Examples of designated districts throughout the central Puget Sound region are listed in the model policies, regulations and other information section.

MFTEs have been effective in producing multifamily units in the region’s larger cities. Since its inception, the MFTE law has been expanded to include smaller cities. The effectiveness of this tool in larger jurisdictions could make it an attractive tool for smaller and moderate-sized cities that meet the population threshold.

Multifamily tax exemptions can encourage relatively dense attached flats or townhomes, in mixed-use projects or residential complexes, which means this tool is particularly useful in urban centers and transit-oriented developments. Dense development is also economically efficient in expensive housing markets, and can reduce housing costs

DATE: September 12, 2019
TO: City of Bainbridge Island City Council
City Manager Morgan Smith
FROM: Morgan Shook
SUBJECT: Bainbridge Affordable Housing – Recap of Framework for Inclusionary Housing and MFTE

The City of Bainbridge Island is evaluating affordable housing incentive programs to understand how they can be better utilized to support citywide efforts to increase the amount of affordable housing. Specifically, the city wants to support its affordable housing efforts with the enhancement and expansion of its housing density bonus zoning and the creation of a multifamily property tax exemption program.

Since the existing density incentive program for affordable housing has been in place, it has not been used much to-date; the current voluntary affordable housing program has been used once since it was approved in 2005. The lack of use indicates that the current density bonus mechanism needs to be revised. To improve program utilization and support the realization of Bainbridge Island’s broader comprehensive plan goals, the City Council requested an analysis of what incentives and zoning changes would be required make the City’s affordable housing incentive program work.

The remainder of this memorandum summarizes recommendations and then provides context and summary from ECONorthwest’s previous work on the city in 2018 and 2019.

Considerations and Recommendations

The City’s current affordable housing incentive program competes with several other incentives and FAR purchase options available within Bainbridge Island, therefore the program has not been utilized as envisioned when it was created. Our analysis found the current base and incentive zoning parameters are the primary barrier to the incentives working effectively.

To improve performance and the realization of public benefits, we recommend an incentive zoning framework that 1) prioritizes affordable housing above other public benefits (public spaces, heritage trees, , etc.), and 2) maximizes the frequency and period of time that these this incentive would likely be used under a variety of changing market conditions. Broadly, there are several key changes the City can undertake to better support these two objectives.

1. **Allow a new maximum height and FAR densities to enable housing and affordable housing production.** We recommend increasing the density and height of buildings within the City’s designated centers. While our analysis did not identify the current height limits as barrier to the utilization of the current incentive program, we recommend increasing the current limit to allow an additional floor, so the program provides flexibility to be used under changing market conditions in the future.

We also recommend moving to an FAR-based density limit for the Neighborhood Center (NC) zones. The NC zone currently uses units per acres to define density, ranging from R-2 – R-5 units per acre. An FAR-based density limit would be consistent with the other growth center zones and provide more flexibility. The table below summarizes the recommended maximum density and height limits for density bonuses by zone and our analysis these zones within these areas.

Exhibit 1: Recommended Maximum Bonus Density and Height Limits

Zone	Current Bonus Density (max)	Proposed Bonus Density (max)	Current Bonus Height (max)	Proposed Bonus Height (max)
Neighborhood Center	5 unit/acre	0.5 FAR	45 feet	45-55 feet
Neighborhood Center/R-12	12 units/acre	2.0 FAR	45 feet	45-55 feet
High School Road District	0.6 FAR	3.0 FAR	45 feet	45-55 feet
Madison Avenue Overlay	0.6 FAR	3.0 FAR	45 feet	55-85 feet
Ericksen Avenue Overlay	0.6 FAR	3.0 FAR	45 feet	55-85 feet
Gateway Overlay	1.0 FAR	4.5 FAR	45 feet	55-85 feet
Ferry Terminal Overlay	1.1 FAR	4.5 FAR	45 feet	55-85 feet
Central Core Overlay	1.0 FAR	4.5 FAR	45 feet	55-85 feet

Source: ECONorthwest

These changes will enable additional housing capacity in these zones. Based on a planning level assessment of existing buildable lands capacity, we have shown in the exhibit below how additional development capacity can create more capacity for housing. That additional housing capacity can be allocated to households for affordable housing via an inclusionary housing policy. Further set-asides of that housing capacity for affordable housing can be enhanced by use of the MFTE program.

The estimates for affordable housing in the columns are independent of each other meaning that 850 of the 10,650-housing unit capacity can be accommodated via inclusionary housing set-aside and an additional 1,280 of that 10,650-unit capacity can be accommodated via MFTE. Cumulatively, that would be 2,130 of the 10,650 capacity could be delivered at income restricted levels.

Again, these are planning-level estimates of capacity not to make the point that the city needs more development capacity per se, but more to single out the issue that the city needs additional capacity in these zones to 1) support development feasibility above the relative low density specified in the existing code and 2) create additional land value to underwrite the subsidies necessary to support affordable housing as part of those projects.

Exhibit 2: Estimated New Housing Capacity Created and Affordable Housing Set-Asides

Zone	Current Housing Capacity (estimated)	New Housing Capacity (estimated)	Inclusionary Housing Set-aside (estimated)	MFTE Housing Set-aside (estimated)
Neighborhood Center	7	15	2	2
Neighborhood Center/R-12	22	50	4	4
High School Road District	280	1,890	150	230
Madison Avenue Overlay	400	2,000	160	240
Ericksen Avenue Overlay	400	1,990	160	240
Gateway Overlay	50	760	60	90
Ferry Terminal Overlay	70	1,560	120	190
Central Core Overlay	530	2,380	190	290
Total	1,760	10,650	850	1,280

Source: ECONorthwest

To estimate capacity, ECONorthwest used a mix of buildable land inventory and land development techniques, including:

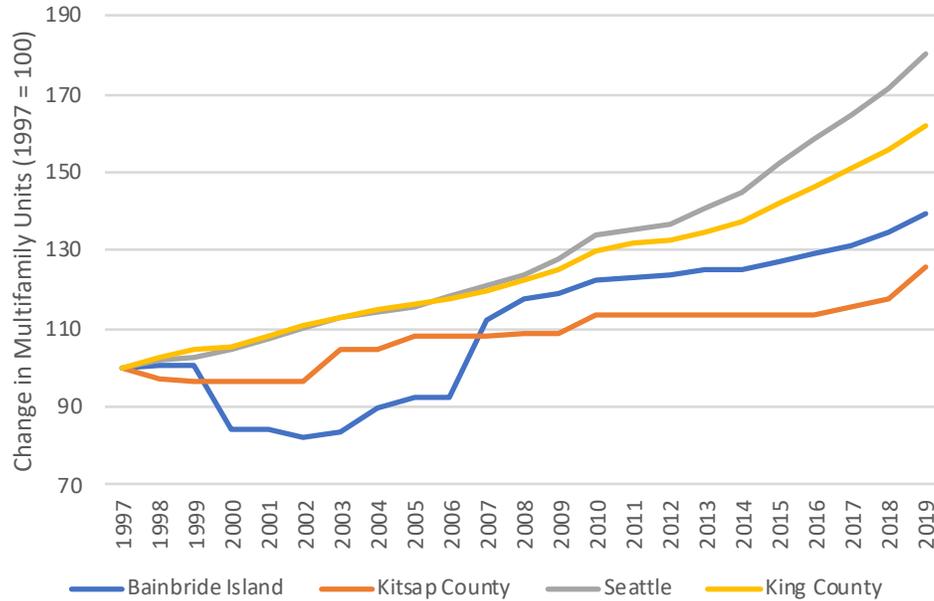
- Relying on city staff to identify vacant and re-developable parcels
- Applying deductions for critical areas and right-of-way
- Estimating developable floor area based on current city zoning (where the city uses housing density as a limiting factor, it is converted to equivalent floor area.
- Estimating developable floor area based on additional capacity
- Converting to corresponding unit sizes based on the type of development (i.e. unit sizes for townhomes, stacked flats, or podium construction.
- For affordable housing set aside amounts, our analysis showed that most zones could accommodate a set-aside rate anywhere between 5-10%. For the use of the MFTE units, we assumed that either the 8- or 12-year program could be used to cover additional units up to the 20% level specified in state law for the 12-year program.

Please keep in mind that the creation of additional capacity does not directly mean that the city will build out a faster pace, although that may be a possibility. The city already has sufficient capacity under the Growth Management Act. Land development can be idiosyncratic. Generally, a land developer must have a financial motivation (market has to present demand), it must have the legal authority under zoning, it must have the proper physical site characteristics, it must have the financial capacity, and it must have the land to do so. Securing land for development is a difficult task for many developers, particularly in urban areas. Here, they must negotiate with the land holder whose interests may not align with them.

Regardless, the move to create more capacity is a move to support more development in housing and affordable housing. As shown in the exhibit below, both Bainbridge Island

and Kitsap County as a whole have lagged the more urban areas in delivering multifamily housing units. Increasing capacity is a necessary step in meeting higher level of units for planned and likely growth in the future.

Exhibit 3: Indexed change in multifamily housing units (indexed to 1997)



Source: ECONorthwest, Office of Financial Management.

2. **Reduce the other incentives available and focus on affordable housing.** The City currently offers incentives for several other public benefits including: providing underground parking, purchasing FAR, providing on-site open space, tree preservation, historic structure preservation, etc.). Reducing competing options will prioritize the use of incentives for affordable housing.
3. **Implement the affordable housing using the existing voluntary incentive structure.** We recommend maintaining a voluntary affordable housing incentive program. The base zoning density limits are relatively low. Thus, most future projects will likely take advantage of the affordable housing incentive if calibrated correctly. Given the low existing FARs in the zoning code, any additional development will in essence use the additional density conditioned on the delivery of affordable housing. The use of voluntary system allows the city to implement the increased zoning capacity without changing the base zoning (or “by-right” entitlements) as well as to be more flexible during market fluctuations.
4. **Establish an MFTE program.** We recommend an 8- or a 12-year MFTE program for affordable housing. Our analysis showed that the MFTE added value for multifamily developments and it would be an additional incentive to support the viability of

multifamily projects and the use of incentive programs. An 8-year program allow the City to set its own affordability requirements (including the share of affordable units, income limits, and length of affordability). The 12-year MFTE program requires 20 percent of units are affordable for 12 years. Further analysis is needed on the MFTE and can provide insight on the best option for the city.

5. **Define the affordable housing benefits based on the new bonus density limits and other incentives.** For affordable housing we recommend 5-10 percent set aside of all units built, depending on the zone. Our analysis indicated that this share would be viable at the densities modeled. The depth of affordability could be set anywhere between 70-90% of area median income. These income levels would be able to be supported at those higher FAR limits (there is some tradeoff between the level of affordability and housing unit set-aside percentage). The City currently requires that all units built through the density bonus be affordable. Because the base zoning limits are relatively low, a high percent of all units are affordable, which had a sizable effect on financial feasibility, contributing to the current program not being used
6. **Make complementary and supporting code changes.** In addition to the seven changes above, there are several small, less critical changes the City can pursue that also will help support the affordable housing and TDR incentive programs that we also recommend the City consider.
 - Remove separate FAR limits for residential and commercial uses in mixed-use buildings. Instead, establish one, new FAR limit for the entire building by zone as discussed above.
 - Reduce parking requirements to 1.0 space per unit. Maintain reduction of half for areas within 0.5 mile of ferry terminal, which would then allow 0.5 space per unit within 0.5 mile of ferry terminal.

Background and Key Findings to Date

Improving Market Conditions but Development Still Has Challenges

Bainbridge Island has realized increasing growth and stronger market fundamentals, particularly during the last five years. Apartment vacancies have declined, and average rents have increased. The median sales price for a home in Bainbridge Island has also increased from \$719,000 in 2009 and reached \$820,000 in 2018. In response to improving market conditions, building permit activity and the number of housing units built has increased over the last seven to eight years. However, the number of housing units built during the last several years is still below the pre-2008 recession averages. In addition, increasing construction costs and land prices make the current market more challenging for new development to “pencil out” from a financial perspective.

Development Code Presents Challenges for New Growth

ECONorthwest evaluated the current incentive programs and analyzed the viability of multifamily and mixed-use buildings under the base zoning requirements and current bonus density incentives. This analysis focused on zones in the City’s designated growth centers:

- Neighborhood Centers (NC/R-12, Lynwood Center, Island Center, Rolling Bay)
- High School Road District
- Madison Avenue Overlay
- Ericksen Avenue Overlay
- Gateway Overlay
- Ferry Terminal Overlay
- Central Core Overlay

Overall, the development analysis found that current base zoning and available incentives do not support the provision of affordable housing units. While the current density bonus incentives do increase the value of each of the building types analyzed, they do not create enough value to capture for public benefits (e.g. affordable housing). Land acquisition is necessary component of any development budget. As the region has economically grown, low-cost land is a scarcity in most urban areas. On Bainbridge in the higher density zoned areas, the price for property in is relatively higher due to the underlying economic conditions described above and accentuated by the limited number of developable sites in the City’s designated (or growth) centers that are served by water/sewer infrastructure.

Zoning Changes are Necessary to Incentivize Affordable Housing

To improve financial feasibility and utilization of the incentive programs, development projects need to be able to use development sites more efficiently and achieve more physical scale. To do this, the City has three key zoning regulatory levers it can adjust.

-
- **Increasing density limits.** This would increase the amount of building square feet, primarily through higher floor area ratios (FAR) limits or more dwelling units per acre.
 - **Raise height limits.** This would allow more building square feet and more flexibility developing a site to provide open space on the site.
 - **Reduced parking requirements.** This helps reduce construction costs and allows more flexibility in developing a site, because less area (and cost) would need to be dedicated to parking spaces.

These options align with the recommendations outlined in the Affordable Housing Task Force Final Report. The report recommends the City make code changes to increase density limits, building heights, and reduce parking requirements (Recommendation 1B).

The central question of this analysis is whether additional changes to these restrictions or limitations (zoning capacity) creates enough value to cover the additional cost of construction and operations and still provide a defined percent of affordable units. If additional zoning capacity does create enough value, what are the FAR and height maximums necessary for the incentive program to work under current market conditions and future market changes.

To assess what scale and density are needed, ECONorthwest analyzed the same building prototypes and zones as in the 2018 baseline development analysis. This analysis assumed more building area and higher heights than currently allow under zoning. The analysis also assumed the City implemented an MFTE program (either a the 8 or the 12) and reduced parking requirements (this included some level of parking reductions in most zones).

The development analysis results indicate the City would need allow for a substantial increase in floor area allowed for sizable provision of affordable housing or any other public benefit, such as the purchase of TDR credits, under current market conditions. Current bonus FAR limits in the Mixed-Use Town Center and High School Road District are 1.0 and up to 1.5 in the Central Core Overlay zone. These limits would have to be increased to at least 3.0 FAR in the High School Road District and 4.5 FAR in the Mixed-Use Town Center districts (including the Ferry Terminal, Madison, and Central Core). More modest increases in height (going from 45 to 65 feet) may also be necessary in order to achieve the higher levels of FAR.

Other Tools, such as MFTE, can Support Incentive Programs

The City has a variety of other incentives it can use to ensure development feasibility as part of an incentive program in addition to increasing zoning capacity. Direct subsidies, tax abatements, and reduced parking requirements, which was mentioned above, are the most impactful. The Multi-Family Tax Exemption (MFTE) program¹ is the one of the best options in Washington State that is available to the City. The Affordable Housing Task Force also recommended the City adopt an MFTE program (Recommendations 1C).

¹ RCW 84.14

The MFTE is a property tax abatement on the residential portion of new multifamily housing development. There are two versions of the program: an eight-year abatement and a 12-year abatement. The 12-year abatement requires that at least 20 percent of the housing units are affordable to households earning 80 percent of the Area Median Income. The eight-year program does not have an affordability requirement, but it can be used in conjunction with an affordable housing incentive zoning program, that itself could have a minimum affordable housing requirement.

The Development Analysis evaluated the eight-year and twelve-year versions of the MFTE and found that it added substantial value to projects. Including an MFTE as part of the City's incentive program could help support both the affordable housing delivered through the density additions as well as supporting additional affordable housing via the tax subsidy.

City of Bainbridge Island

Transfer of Development Rights and Inclusionary Zoning Assessment

February 2019

Prepared for:
City of Bainbridge Island

FINAL REPORT

ECONorthwest
ECONOMICS • FINANCE • PLANNING

FORT&ERRA
FOR THE PEOPLE. FOR THE LAND. FOREVER.

Park Place
1200 Sixth Avenue
Suite 615
Seattle, WA 98101
206.388.0079

This page intentionally blank

Table of Contents

EXECUTIVE SUMMARY	1
1 INTRODUCTION	11
1.1 PREVIOUS EFFORTS	12
1.2 REPORT ORGANIZATION	13
2 POLICY CONTEXT	14
2.1 ZONING SUMMARY	15
2.2 TRANSFER OF DEVELOPMENT RIGHTS	17
2.3 AFFORDABLE HOUSING	18
3 EXISTING CONDITIONS	19
3.1 PROGRAM UTILIZATION	19
3.2 REAL ESTATE MARKET CONDITIONS	19
3.3 STAKEHOLDER INTERVIEWS	20
4 DEVELOPMENT ANALYSIS	22
4.1 APPROACH	22
4.2 FEASIBILITY COMPARISON	26
5 POLICY OPTIONS	29
6 CONSIDERATIONS AND RECOMMENDATIONS	35
APPENDIX A – REAL ESTATE MARKET ANALYSIS	38
INTRODUCTION	38
MARKET ANALYSIS	39
RECENT DEVELOPMENT EXAMPLES	46
DEMAND OUTLOOK	48
IMPLICATIONS FOR DEVELOPMENT INCENTIVES	49
APPENDIX B – PRO FORMA ASSUMPTIONS	50
APPENDIX C – MEDIAN INCOME LIMITS	51

This page intentionally blank

Executive Summary

The City of Bainbridge Island is evaluating its affordable housing and transfer of development rights (TDR) incentive programs to understand how they can be better utilized to support citywide efforts to increase the amount of affordable housing and land maintained for open space, respectively. While these incentive programs have been in place for over 20 years, neither of these specific programs have been used much to-date; the current affordable housing program has been used once since 2005. The lack of use indicates that the current density bonus mechanism needs to be revised. To improve program utilization and support the realization of Bainbridge Island's broader comprehensive plan goals, the City Council requested an analysis of what incentives and zoning changes would be required make the City's affordable housing incentive program and TDR program work. In addition, the Council would like to understand the implications of a mandatory versus voluntary affordable housing program.

Improving Market Conditions but Development Still Has Challenges

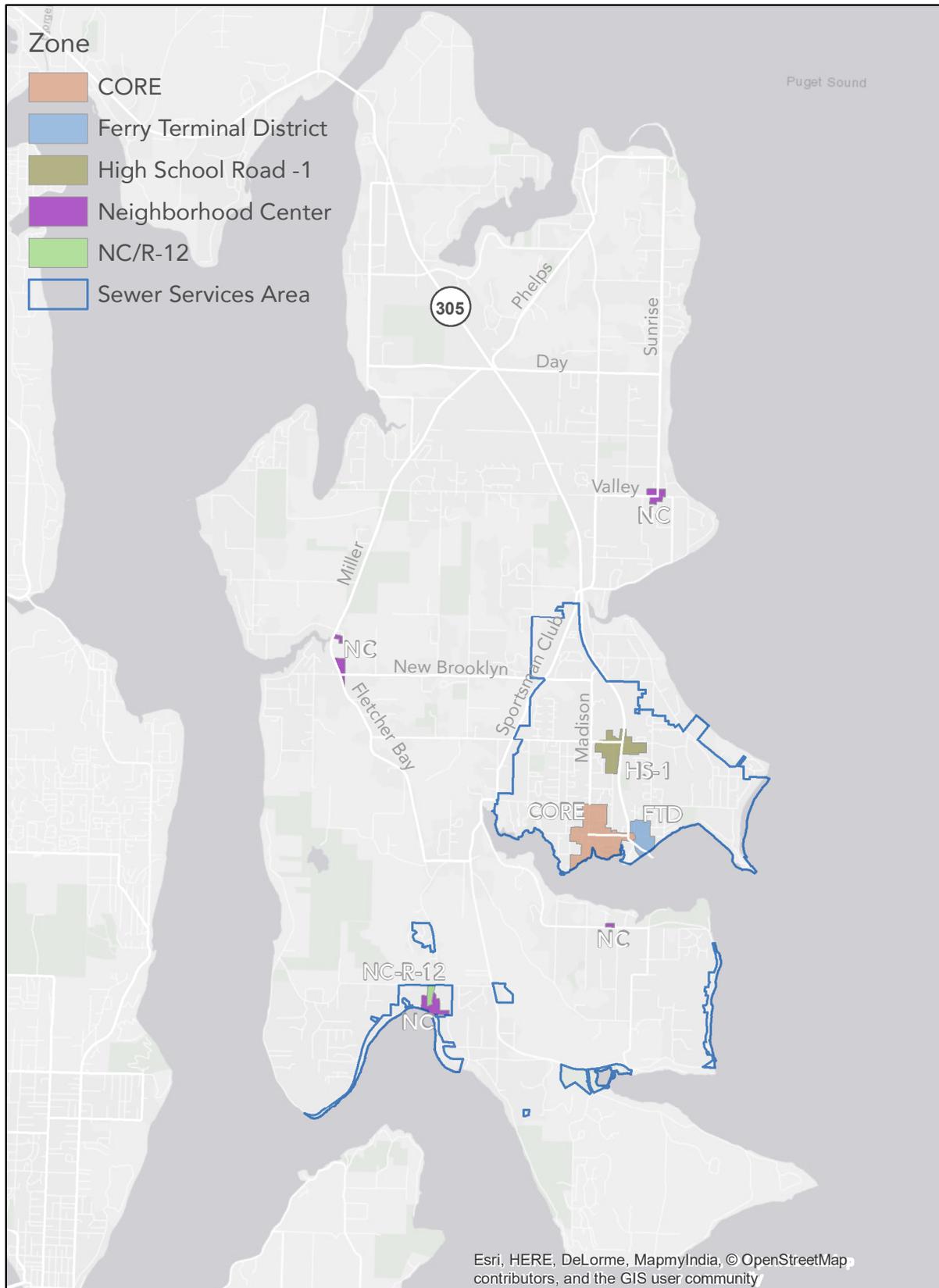
Bainbridge Island has realized increasing growth and stronger market fundamentals, particularly during the last five years. Apartment vacancies have declined, and average rents have increased. The median sales price for a home in Bainbridge Island has also increased from \$719,000 in 2009 and reached \$820,000 in 2018. In response to improving market conditions, building permit activity and the number of housing units built has increased over the last seven to eight years.

However, the number of housing units built during the last several years is still below the pre-2008 recession averages. In addition, increasing construction costs and land prices make the current market more challenging for new development to "pencil out."

Development Code Presents Challenges for New Growth

ECONorthwest and Forterra evaluated the current incentive programs and analyzed the viability of multifamily and mixed-use buildings under the base zoning requirements and current bonus density incentives. This analysis focused on zones in the City's designated growth centers (Neighborhood Center, High School Road District, Ferry Terminal Overlay, and Central Core Overlay zones). Exhibit 1 shows where these zones are located within the city.

Exhibit 1. Zones Analyzed



Source: City of Bainbridge Island, ECONorthwest

Overall, the development analysis found that current base zoning and available incentives do not support the provision of affordable housing units or purchase of TDR credits. While the current density bonus incentives do increase the value of each of the building types analyzed, they do not create enough value to capture for public benefits (e.g. affordable housing and land conservation). Further, the price for property in Bainbridge Island is relatively high due to the scarcity of infrastructure and limited number of developable sites in the City's designated (or growth) centers.

Zoning Changes are Necessary to Incentivize Affordable Housing and TDR Use

To improve financial feasibility and utilization of the incentive programs, development projects need to be able to use development sites more efficiently and achieve more physical scale. To do this, the City has three key regulatory levers it can adjust.

- **Increasing density limits.** This would increase the amount of building square feet, primarily through higher floor area ratios (FAR) limits or more dwelling units per acre.
- **Raise height limits.** This would allow more building square feet and more flexibility developing a site to provide open space on the site.
- **Reduced parking requirements.** This helps reduce construction costs and allows more flexibility in developing a site.

These options align with the recommendations outlined in the Affordable Housing Task Force Final Report. The report recommends the City make code changes to increase density limits, building heights, and reduce parking requirements (Recommendation 1B).

Strategic Options for Incorporating Public Benefits

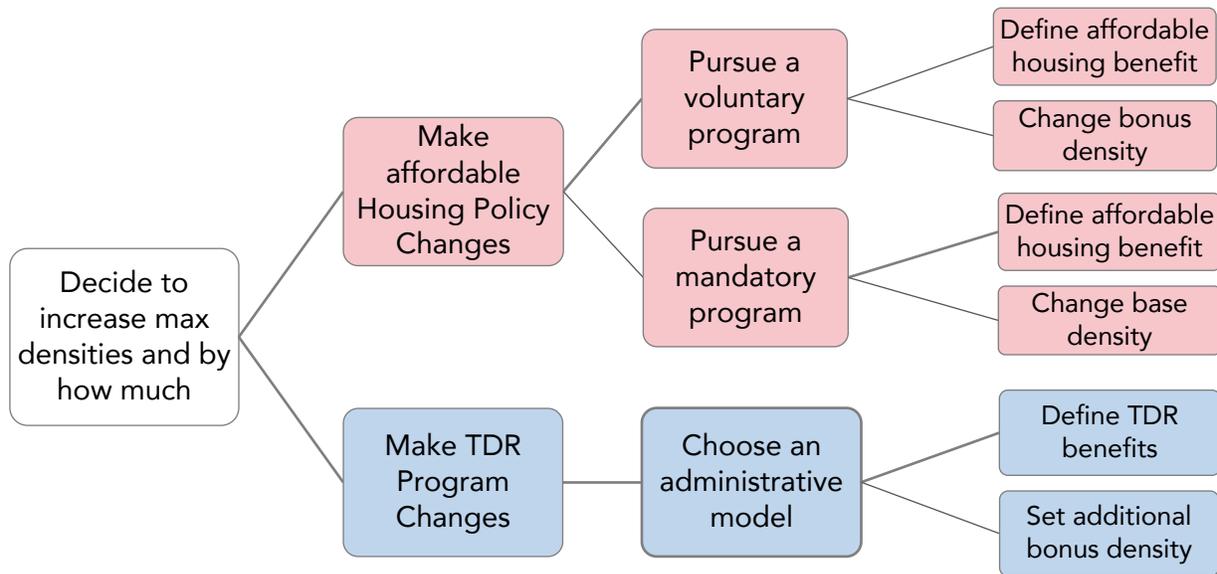
In addition to making the zoning changes described above, the City has several options to increase the provision of affordable housing units and/or purchase of TDR credits through how it defines the public benefits required to realize the incentives offered. The current TDR and affordable housing incentives function as separate programs. The City can continue to have them function separately and make changes to each so they work on their own. However, if desired, the City can link the programs so that both the provision of affordable housing and the purchase of TDR credits are realized from an individual project using the density bonus.

Exhibit 2 outlines the decision tree for making these policy decisions. For the affordable housing incentive program, an important, initial step is whether the City makes provisions for affordable housing voluntary or mandatory. The City currently has a voluntary program for affordable housing. However, the Affordable Housing Task Force Report recommended a mandatory program, pending the completion of this study (Recommendation 1A). For the TDR program, an initial step will be to define how the program is administered.

Subsequent steps will need to define the public benefit for affordable housing and TDR purchases required. The amount of affordable housing provided or TDR credits purchased

determine what level of density is needed to support the provision of those public benefits¹. For example, a higher share of affordable units—10 percent compared to 5 percent—will require a higher level of density allowed so that projects are financially viable and get built. Thus, the base and bonus density limits for each approach will also differ.

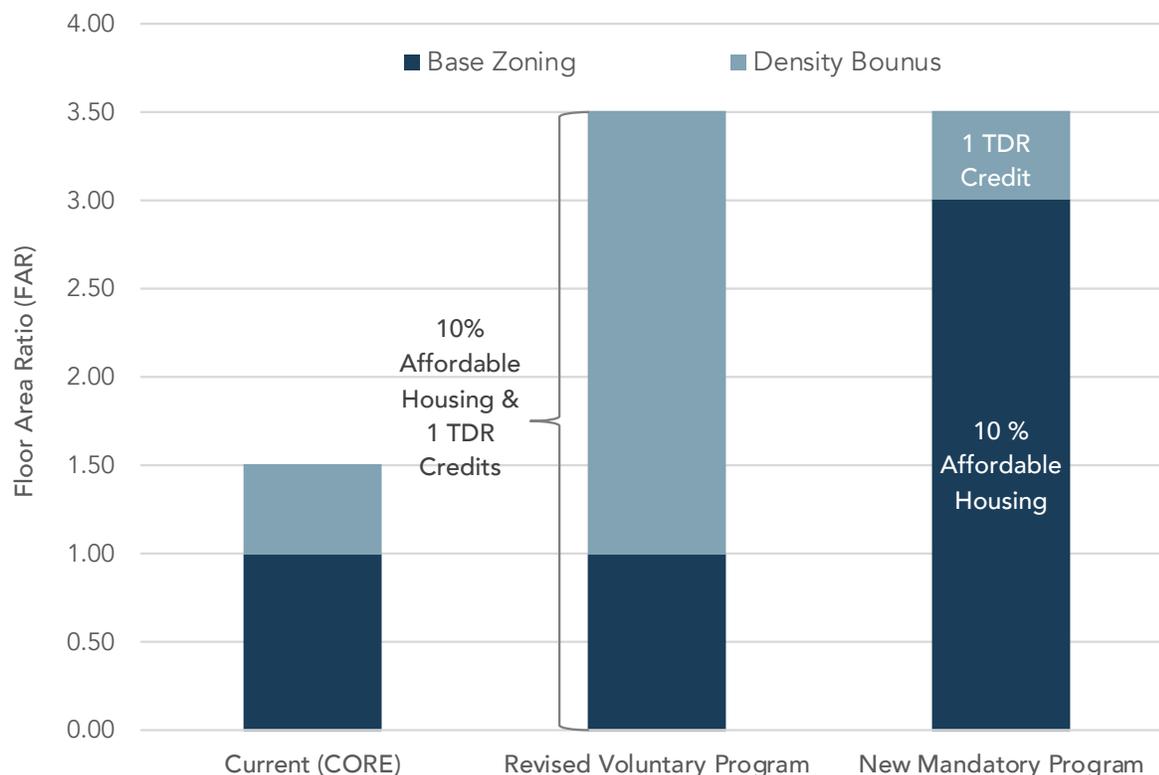
Exhibit 2. Strategic Options Decision Tree



The chart below shows the current FAR limits for a mixed-use building in the Central Core Overlay zone and how FAR limits would likely need to change under a revised voluntary or new mandatory program. The number of affordable units built, and TDR credits purchased would be different for mandatory program versus a voluntary program, even if the maximum density allowed is the same (e.g. 3.5 FAR).

¹ RCW 36.70A.540

Exhibit 3. Example FAR Limits for Mixed-Use Building in the Central Core Overlay Zone



Source: ECONorthwest

Voluntary Program. A revised version of this program would keep the base zoning the same and increase the density bonus (higher FAR limits and increased height). The value created through the increased density bonus can be divided between affordable housing and TDR purchases (50/50, for example). For our analysis, we assumed a development would make 10 percent of all units affordable and purchase at least one development right (or TDR credit) to realize the density bonus.

Mandatory Program. A mandatory program would be more complicated. All development projects would be required to provide a defined share of affordable housing units. Although, small scale project can be exempted from the requirement. To ensure projects are financially viable (so units get built) the City would need to substantially increase the base zoning density and height limits. Even if the defined share of affordable housing was the same as the voluntary program (10 percent), the total number of affordable units provided would be slightly less because the size of the building area that 10 percent applies to is smaller (a building area with 3.0 FAR compared to 3.5 FAR). A more detailed discussion is provided in Section 5.

In addition, a TDR incentive (additional density or height increase above the newly increased base zoning) would be added to the mandatory affordable housing requirement to provide a mechanism for TDR credits to be purchased.

Other Tools, such as MFTE, can Support Incentive Programs

The City has a variety of other incentives it can use to ensure development feasibility as part of an incentive program in addition to increasing zoning capacity. Direct subsidies, tax abatements, and reduced parking requirements, which was mentioned above, are the most impactful. The Multi-Family Tax Exemption (MFTE) program² is the one of the best options in Washington State that is available to the City. The Affordable Housing Task Force also recommended the City adopt an MFTE program (Recommendations 1C).

The MFTE is a property tax abatement on the residential portion of new multifamily housing development. There are two versions of the program: an eight-year abatement and a 12-year abatement. The 12-year abatement requires that at least 20 percent of the housing units are affordable to households earning 80 percent of the Area Median Income. The eight-year program does not have an affordability requirement, but it can be used in conjunction with an affordable housing incentive zoning program.

The Development Analysis evaluated the eight-year version of the MFTE and found that it added substantial value to projects. Thus, not including an MFTE as part of the City's incentive program would likely require increasing allowed densities to compensate for the lost value and/or reducing the public benefits required to maintain the feasibility of projects.

Trade-off Between Incentive Maximums and Public Benefits

The central question of this analysis is whether additional zoning capacity creates enough value to cover the additional cost of construction and operations and still provide a defined percent of affordable units and purchase TDR credits. If additional zoning capacity does create enough value, what are the FAR and height maximums necessary for the incentive program to work under current market conditions and future market changes.

To assess what scale and density are needed, ECONorthwest analyzed the same building prototypes and zones as in the baseline development analysis. This analysis assumed more building area and higher heights than currently allow under zoning. The analysis also assumed the City implemented an MFTE program and reduced parking requirements, as discussed in the sections above.

Exhibit 4 shows the maximum building scale and density assumed, the number of affordable housing units created (assuming 10 percent of units designated as affordable³), and the range of acres conserved (depending on the zoning of the sending site⁴).

² RCW 84.14

³ One-person household earning 80 percent of the area median income and spending 30 percent or less of their income on housing.

⁴ Assuming an average value of \$75,000 per development right/credit.

Exhibit 4. Maximum Development Assumptions Evaluated by Zone and Estimated Benefits

	NC - Townhomes	NC/R-12 - Mixed Use	HS-1 - Multifamily	FERRY - Mixed Use	CORE - Mixed Use
Height	20	35	40	55	55
Density (Floor area ratio)	0.46	1.72	3.00	4.50	4.50
Density (Units per acre)	10.0	62.0	122.0	196.0	196.0
Parking (Spaces/Unit)	1.50	1.00	0.75	0.75	0.75
Affordable Units Created	1	6	6	18	9
Acres Conserved (High est.)	9.2	11.5	16.1	32.1	9.2
Acres Conserved (Low est.)	1.8	2.3	3.2	6.4	1.8

High estimate assume credits all purchased for land zoned R-0.4

Low estimate assume credits all purchased for land zoned R-2

Source: ECONorthwest

The development analysis results indicate the City would need allow for a substantial increase in floor area allowed for sizable provision of affordable housing and purchase of TDR credits under current market conditions. Current bonus FAR limits in the Mixed-Use Town Center and High School Road District are 1.0 and up to 1.5 in the Central Core Overlay zone. These limits would have to be increased to at least 3.0 in the High School Road District and 4.5 in the Mixed-Use Town Center. More modest increases in height (going from 45 to 55 feet) may also be necessary.

Ultimately, for any revisions to the current incentive program, there is a trade-off between different options that the City will need to consider. Allowing more density and heights will allow the City to require a higher share of affordable housing, lower affordability levels, and/or more dollars for purchasing TDR credits. Conversely, lower density and height maximums will result in less affordable housing and fewer dollars used for TDR purchases. However, if the defined public benefits are set too high, the private market might wait until market dynamics change for development to occur. This challenge is encountered by every jurisdiction trying to calibrate an incentive zoning policy.

Considerations and Recommendations

The City’s current affordable housing incentive program and TDR program are separate incentives that compete among several other incentives and FAR purchase options available within Bainbridge Island. Neither of these programs has been utilized as desired. Our analysis found the current base and incentive zoning parameters are the primary barrier to the incentives working effectively.

To improve performance and the realization of public benefits, we recommend an incentive zoning framework that 1) prioritizes affordable housing and the purchase of TDR credits above other public benefits (public spaces, underground parking, etc.), and 2) maximizes the frequency and period of time that these two incentives would likely be used under a variety of changing market conditions. Broadly, there are several key changes the City can undertake to better support these two objectives.

1. **Allow a new maximum height and FAR densities.** We recommend increasing the density and height of buildings within designated growth centers. While our analysis did not identify the current height limits as barrier to the utilization of the current incentive program, we recommend increasing the current limit to allow an additional floor, so the program provides flexibility to be used under changing market conditions in the future.

We also recommend moving to an FAR-based density limit for the NC zone. The zone currently uses units per acres to define density. An FAR-based density limit would be consistent with the other growth center zones and provide more flexibility.

The table below summarizes the recommended maximum density and height limits for density bonuses by zone. Our analysis only looked at five zones with these areas. Additional analysis would be needed to determine the bonus maximums for the zones not studied.

Exhibit 5. Recommended Maximum Bonus Density and Height Limits

Zone	Current Bonus Density	Current Bonus Height	Recommended Bonus Density	Recommended Bonus Height
Neighborhood Center	5 unit/ac	45 feet	0.5 FAR	45 feet
Neighborhood Center/R-12	12 units/ac	45 feet	2.0 FAR	45 feet
High School Road District - 1	0.6 FAR	45 feet	3.0 FAR	45 feet
Ferry Terminal Overlay	1.1 FAR	45 feet	4.5 FAR	55-75 feet
Central Core	1.0 FAR	45 feet	4.5 FAR	55-75 feet

Source: ECONorthwest

Key Questions:

What areas of the city do you want to target for the affordable housing and/or the TDR program?

In what areas, if any, do you want both TDR and affordable housing to operate?

What zones do you want to increase capacity?

2. **Reduce the other incentives available and focus on affordable housing and TDR.** The City currently offers incentives for several other public benefits including: providing underground parking, FAR purchases, providing on-site open space, tree preservation, historic structure preservation, etc.). Reducing competing options will prioritize the use of incentives for the affordable housing and TDR programs.
3. **Create an administrative model for the TDR program.** The current TDR program code does not identify a clear process by which a landowner or a developer can participate in the program. We recommend that the City creates both an administrative structure for the operation of the program as well as easily accessible informational resources to prospective users of the program. Until a robust market for TDR evolves in the City, we recommend a simple private buyer-seller model with public support. As program activity increases or if the City allocates funding to acquire TDR credits, the creation of a

TDR bank would serve a useful purpose to augment the private market transactions. Additional resources will support the emergence of a marketplace, such as an online listing of landowners who wish to sell their development rights, electronic copies of application forms that users can download, and a dedicated webpage for the TDR program that explains the tool, identifies sending and receiving areas, illustrates the process for using the program, and gives appropriate City staff contact information.

Key Question: What type of administrative model does the City want to use?

4. **Establish a fee in-lieu option for the affordable housing and TDR incentive programs.**

A fee in-lieu options would provide more flexibility for developments, particularly smaller projects. For example, as part of a revised TDR program the City could collect and use these funds for the purchase of development rights and conservation easements in Bainbridge Island.

Key Questions:

Should the TDR program have a fee in-lieu option?

Should the affordable housing incentive have a fee in-lieu option?

Should there be a minimum size threshold for projects eligible for a fee in-lieu option?

5. **Decide to maintain a voluntary or establish a new mandatory affordable housing program.** We recommend maintaining a voluntary affordable housing incentive program. The base zoning density limits are relatively low. Thus, most future projects will likely take advantage of the affordable housing incentive if calibrated correctly. As shown in Exhibit 3, a voluntary program has the potential to yield more public benefits when used compared to a mandatory program as well.

Establish an MFTE program. We recommend an 8-year MFTE program. Our analysis showed that the MFTE added value for multifamily developments and it would be an additional incentive to support the viability of multifamily projects and the use of incentive programs. In addition, an 8-year program allow the City to set its own affordability requirements (both the share of affordable units and length of affordability). The 12-year MFTE program requires 20 percent of units are affordable for 12 years.

Key Questions:

Do you want to use the 8-year MFTE to further incentivize TDR placement?

Do you want the MFTE to supplement affordable housing production? If so, do you want to use an 8- or 12-year program?

6. Define the affordable housing and TDR benefits based on the new bonus density limits and other incentives.

- For affordable housing we recommend 10 percent set aside of all units built. Our analysis indicated that this share would be viable at the densities modeled. The City currently requires that all units built through the density bonus be affordable. Because the base zoning limits are relatively low, a high percent of all units are affordable, which had a sizable effect on financial feasibility.
- For TDR, the benefit to a developer is defined by an exchange rate: what additional value does a developer gain by purchasing one credit? No exchange rate is currently set by the program or code and this uncertainty deters participation. If the City is going to award density bonus on an FAR basis, the appropriate units to express an exchange rate is in additional square feet of building area per credit purchased. For example, for each TDR credit purchased, a developer may build an additional 2,000 square feet of floor area up to the FAR limit of 3.5. Further evaluation of conservation area land values is needed to calibrate an exchange rate that will drive demand for TDR.

In addition to the seven changes above, there are several small, less critical changes the City can pursue that also will help support the affordable housing and TDR incentive programs that we also recommend the City consider.

- Expand the receiving areas available for TDR credits. Residential zones, such as R-2.9 and R-3.5 could support the placement of TDR credits and conservation open space elsewhere on the island by allowing additional units in exchange for purchasing a TDR credit.
- Remove separate FAR limits for residential and commercial uses in mixed-use buildings. Instead, establish one, new FAR limit for the entire building by zone as discussed above.
- Reduce parking requirements to 1.0 space per unit. Maintain reduction of half for areas within 0.5 mile of ferry terminal, which would then allow 0.5 space per unit within 0.5 mile of ferry terminal.
- Expand the areas where denser development can be built to increase the number lower cost development sites available where projects would be financially viable. In addition to rezoning areas, this would include ensuring existing neighborhood centers have the infrastructure available to support the growth planned for those areas.

1 Introduction

The City of Bainbridge Island is evaluating its affordable housing and transfer of development rights (TDR) incentive programs to understand how they can be better utilized to support citywide efforts to increase the amount of affordable housing and land maintained for open space, respectively. Both programs are intended to incentivize development projects to include housing units that are more affordable, or to purchase development rights from areas elsewhere on the island to be maintained as open space (i.e. the transfer of a parcel's development right to a different location where growth is more desired). The incentive currently offered is a density bonus, which allows buildings to be larger and taller than allowed under the base zoning requirements.

Development incentive programs are complex and must be responsive to a constantly changing real estate market. The purpose of this study is to understand the real estate market conditions, evaluate the City's existing incentive provisions, and to recommend potential changes to the existing provision based on thorough analysis of different policy options and development feasibility.

The City Council has specifically stated an interest in understanding the potential of the current incentive programs to provide "workforce" housing (units affordable to households earning 60-80% of the median income) and to utilize transfer of development rights (TDR) credits. The Council also stated their interest in focusing on growth centers, including Neighborhood Centers and the Winslow Village area (High School Road district and zones near the ferry terminal with mixed-use zone and allowing greater densities). Overall, the Council wanted the analysis to assess what incentives and zoning changes would be required to make the City's incentive programs work and to understand the implications of a mandatory versus voluntary affordable housing requirement.

Key study questions:

- What is the current opportunity to use the land use code to achieve public benefits (e.g. affordable housing and land conservation)?
- What code changes limit or could support public benefit desires?
- Should the affordable housing provisions be voluntary through an incentive or mandatory?
- What other incentives could be used to support public benefit desires?

1.1 Previous Efforts

Transfer of Development Rights

In 2006 a consultant team undertook a comprehensive review of the city’s TDR program.⁵ The evaluation included assessments of conservation priorities, market demand, credit valuation, program mechanics, and administration. Among the key findings from that report, several issues are unresolved and remain relevant to the current analysis. These include:

- **Demand for development rights is limited by receiving area capacity.** As a market-based real estate tool, TDR works when it is connected to demand for growth. Now, as then, opportunities for using TDR are constrained by a lack of places in which developers can gain additional value for projects by purchasing development rights.
- **Competing city programs further limit demand.** One ongoing challenge to the success of TDR is that developers have a range of options for achieving the desired intensities of projects. By streamlining these choices and aligning them with policy priorities the city can improve the chances of successfully achieving growth and conservation objectives.
- **The value of development rights in the receiving areas can vary considerably.** Since 2006, growth patterns across Bainbridge Island have continued to take a variety of forms. Different development types take a range of values and incentives that are attractive for one type but may not be feasible for others. This analysis takes such variability into consideration, whether considering TDR in the context of single-family development or multifamily, mixed-use projects in the downtown core.

The findings and recommendations of the 2006 report informed the design of the current analysis to the extent that some of the factors influencing TDR use then are still present. In the intervening time the dynamics of the local real estate market have shifted and policy priorities have evolved to include a greater emphasis on housing affordability. The present design challenges seek to balance market-based conservation, encouraging growth in specific areas and increasing the stock of affordable housing—either by mandate or through incentives.

Affordable Housing

At the end of 2018 the City’s Affordable Housing Task Force released its final report and recommendations. The City Council formed the Task Force to study and make recommendations about near-term actions the City can take to “improve access to affordable housing across the economic spectrum.”⁶ The Task Force was composed of 15 citizens who met over the next year and a half.

The Task Force’s final report outlined five priority recommendations and five “Quick Wins” the City could pursue to address its affordable housing challenges. The five-priority recommendation included:

⁵ [City of Bainbridge Island Transfer of Development Rights Program Review](#), MAKERS and Community Attributes, 2006

⁶ 2018 Affordable Housing Task Force Final Report, page 1

1. Draft and adopt code changes to encourage infill in the Designated Centers, with the assistance and advice of ECONorthwest.
2. Pursue opportunities to partner with the private and nonprofit sectors to build affordable housing on public lands.
3. Adopt procedures to encourage Accessory Dwelling Units.
4. Adopt an “Innovations Program” that allows staff to permit experimental affordable housing projects, on a limited basis, that are not currently allowed by code.
5. Create a permanent affordable housing committee and designate a City employee who will spend at least half-time on affordable housing strategies.

Recommendation number one directly relates the findings of this report. This recommendation also had three specific and related recommendations cited in the Task Force’s report.

- 1a. Adopt a Mandatory Inclusionary Zoning Ordinance
- 1b. Enact changes in FAR to encourage affordable housing
- 1c. Adopt a Multifamily Property Tax Exemption

The consultant team evaluated each of these specific recommendations in our analysis and address them later in the report.

1.2 Report Organization

The remainder of the report is organized in to four subsequent sections.

- **Policy Context.** This section summarizes the City’s growth policies with a focus on those most relevant to the TDR program and affordable housing incentives.
- **Existing Conditions.** This section reviews the incentive programs utilization, broad real estate market conditions, and the development feasibility of example projects under different zoning standards.
- **Policy Options.** This section assesses the City options for revising its affordable housing and TDR incentive programs.
- **Considerations and Recommendations.** The last section outlines the consultant team’s recommendations for moving forward and specific issues the City will likely have to make decisions about if it chooses to revise the incentive programs.

In addition, there are two appendices providing more detailed information on real estate market conditions (Appendix A) and the assumptions used in the development analysis (Appendix B).

2 Policy Context

This section summarizes the City’s growth policies with a focus on those most relevant for affordable housing incentives and the TDR program. The City’s growth strategy—embodied in its comprehensive plan—is to concentrate growth in designated centers, which include Winslow, Lynwood Center, Rolling Bay, and Island Center. The types of housing and commercial uses prioritized through comprehensive plan policies in these areas include mixed-use development, small to mid-size single-family housing units, multifamily, tiny houses, accessory dwelling units, and cottage housing. The City has yet to adopt code enabling all of these housing types, however. These areas also have or are planned to have the infrastructure to accommodate growth. Winslow specifically is intended to have denser residential and commercial development, as it is located near the ferry terminal and is the city center. The other designated centers are intended to offer housing and small-scale commercial uses and services outside of Winslow.

The lands outside of the City’s designated centers are conservation areas, which minimize the impact of the built environment and protect aquifers, surface waters, and fish and wildlife habitat. Many of the City’s conservation priorities are driven by the desire to protect the island’s drinking water and aquifer system. Infrastructure and access to utilities also inform much of where Bainbridge Island directs growth.

The City has undertaken policies and actions to support resource conservation on the island.

- The TDR program establishes all properties located outside of designated centers, i.e. conservation areas, as development rights sending areas.⁷ The current TDR program also permits agricultural land to be designated as a sending area through sale or transfer of development rights (at a higher rate), as well as allows property owners to donate all or a portion of their development rights to the city.
- The City updated its Critical Areas Ordinance earlier this year to better address priorities identified in the Comprehensive Plan and recommendations provided by the Washington Department of Fish and Wildlife.
- The City prepared an open space plan in 2008, which focused on identifying priority open space lands based on biodiversity values, ecological integrity, recreation, and historical/cultural values. Many of the higher-ranked priority lands are those adjacent to existing open spaces and dedicated parks, providing connected, high-quality habitats and working lands.
- The City also emphasizes the importance of protecting conservation areas through the public acquisition of certain properties, and tools such as aquifer recharge area regulations and promotion of smaller dwelling units to minimize development footprints.

⁷ Bainbridge Island Municipal Code (BIMC) Chapter 18.27.020 *Development Rights Sending Areas*.

2.1 Zoning Summary

The City’s zoning code is one of the primary methods for implementing the City’s growth strategy, and development incentives are a zoning-based tool. The City has a range of development incentives to support open space, affordable housing, the Purchase of Development Rights (PDRs), provision of public infrastructure, ferry parking, and the preservation of heritage trees and historic structures. Mixed use development is also encouraged in the Mixed Use Town Center zones through a higher FAR limit than for buildings with single uses.

As a tool for achieving the City’s growth strategy, these incentives encourage growth in areas identified as Designated Centers to leverage desired community benefits. The incentives relevant to this study are those for the TDR program and affordable housing. Exhibit 6 lists the base density and height limits for select zones within Designated Centers and the bonus density limits for those zones.

Exhibit 6. Current Base and Bonus Zoning Standards by Select Zone

Zone	Base				Bonus			
	Units/Acre	Residential FAR	Mixed Use FAR	Height (Ft)	Units/Acre	Residential FAR	Mixed Use FAR	Height (Ft)
NC*	2.0	NA	NA	35	5.0	NA	NA	45
NC/R-12**	5.0	NA	NA	35	12.0	NA	NA	45
High School Road Districts	NA	0.3	0.3	35	NA	0.6	1.0	45
Ferry Terminal Overlay	NA	0.4	0.5	35	NA	1.1	1.3	45
Central Core Overlay	NA	0.4	1.0	35	NA	1.0	1.5	45

*Infrastructure available

**Mixed use building

Source: City of Bainbridge Island

Incentives for Using the TDR Program

For the TDR Program, existing receiving sites for development credits include Winslow, High School Road, and other neighborhood centers.

- **Neighborhood Centers.** In the neighborhood centers, incentives focus on additional density, providing an additional one to two units per acre with use of TDR and public sewer and water.⁸
- **Winslow and High School Road Districts.** These areas are eligible for density increases (via a higher FAR) up to the maximum residential bonus limit through purchasing development rights.

⁸ BIMC 18.12.030.D Bonus Density in NC District.

Incentives for Providing Affordable Housing

The City currently has multiple incentive provisions in place to increase the production of affordable rental or for-sale housing units. All the affordable housing related incentive programs are voluntary, and the mechanisms and bonuses allowed depend on the specific zone.

- **Residential Density Bonus Provisions.** The City allows increased density (through more units or floor area) above the base requirements with the provision of affordable housing units.
 - Residential Zones: Residential subdivisions in residential zones can receive a density bonus⁹ (one additional unit per acre) for every affordable unit provided above the base density requirements. Housing developments can receive density increases up to 50 percent above the base limit. All additional (or bonus) units must be affordable to households at or below the defined low-income threshold (51-80 percent of area median income, or AMI).
 - Neighborhood Centers: Projects within designated Neighborhood Centers can receive a density bonus of an additional one to two units per acre by providing affordable housing for low income households (51-80 percent of AMI).
 - Winslow Mixed-Use and High School Road Districts: Projects within either of these two districts may receive bonus floor area above the base Floor Area Ratio (FAR) up to the maximum FAR limit for additional floor area dedicated to affordable housing units. The level and mix of affordability depend on the overall size of the project. Projects less 10,000 square feet have to provide units affordable to at least moderate-income households (81-95 percent of AMI). Larger projects, those over 60,000 square feet, must provide at least 10 percent of the bonus area for at least low-income households 60 percent for moderate income households, and the remaining 30 percent of the bonus area for middle income households (96-120 percent of AMI).
- **Housing Design Demonstration Projects (HDDP).** The HDDP is an optional development process that provides more flexible design standards as well as density bonuses for residential housing projects that provide a diversity of unit sizes, meet green building standards, and incentivizes designated affordable units.

The program has four tiers of density incentives based on the level of green building and affordable housing provisions met. Projects qualifying for Tier 1 do not receive any density bonus, while Tiers 3 4 projects can receive a bonus of up to 2.5 times the base density or the maximum FAR allowed.

Single-family subdivisions and multifamily developments (including mixed-use buildings) within the Winslow Study Area of the Winslow Master Plan and Winslow Sanitary Sewer System Service Area are eligible to participate in the program. To date, the program has produced 47 affordable housing units. Housing Resource Bainbridge constructed 40 of the units in the Ferncliff Village projects, and another seven units

⁹ BIMC 18.21

under construction in two separate development projects. In August 2018, the City Council suspended the HDDP program for projects that are not 100 percent affordable housing.

2.2 Transfer of Development Rights

The City's TDR program is defined in BMC 18.27 with a purpose of protecting wetlands, aquifer recharge areas, agricultural land, and open space while encouraging growth in higher density areas within the city.

Currently, the City's TDR program is designed to function through private market interactions. Many developers we interviewed for this report were unaware of the existence of the program and expressed interest in using it to achieve higher intensity uses in their projects. Unlike other TDR programs around the central Puget Sound region, the Bainbridge Island example does not have a dedicated informational web page to explain the program or direct prospective users in how to participate.

The current code defines two key components of the program, sending sites (those areas the City seeks to conserve) and receiving sites (those areas where the City encourages growth, or the areas to which development rights are transferred).

- **Sending Sites.** Currently, the entire island outside of designated centers is identified as a potential sending site (referred to as "conservation areas" in the comprehensive plan). As a result, all potential properties are assumed to have comparable conservation value.
- **Receiving Sites.** Sites eligible for using the TDR incentive program are located within Winslow Mixed use Town Center and High School Road Districts, NC Districts, and R-14 and R-8 districts.

The code also specifies that a conservation easement is the legal instrument by which the sending site will be protected. Landowners seeking to conserve their properties apply to the city for issuance of TDR certificates, which are calculated based on how many homes the landowner could build on the property. Once the landowner has accepted a conservation easement and deed restrictions have been recorded with the City and County, the City issues certificates which the landowner may in turn sell to developers who wish to add density to an eligible project in a receiving area.

The current program has practical limitations, including no clear definition of an exchange rate (how much bonus value does a developer gain from purchasing a credit), no standardized forms or process for applying to the program, and no sample easement language for sending site landowners. It also does not address stewardship and monitoring of protected areas. The lack of a fixed exchange rate introduces challenges for developers, as this reduces certainty in a transaction. Developers need to know how much value a credit will add to a project in order to understand how much money they can offer to buy one from a sending site landowner.

2.3 Affordable Housing

The Housing Element of the Comprehensive Plan establishes the housing goals and implementing policies for Bainbridge Island. The broader vision embodied in the Housing Element is for a city with a broad variety unit types, primarily in the designated growth centers. The City's affordable housing density bonus program is one of the tools for implementing this vision. Chapter 18.21 of the municipal code establish the affordable housing density bonus provisions. Affordability levels are based on the area median household income and households size. Appendix C shows the median income limits by household size used for 2018. The income categories are defined as follows:

- Extremely low income—less than 30 percent of median household income.
- Very low income—31 to 50 percent of median household income.
- Low income—51 to 80 percent of median household income.
- Moderate income—80 to 95 percent of median household income.
- Middle income—96 to 120 percent of median income.

The amount of the density bonus depends on the affordability level of the units provided and if the units are for-rent or for-sale. All additional units built above the base zoning limits must meet the following affordability requirements.

- **Rental units** can receive a bonus of 50 percent of the base zoning if the additional units provided are affordable for households in the low-income category or below.
- **For-sale units.** There are three tiers for the bonus area depending on the affordability levels of the additional units provided.
 - Bonus of 50 percent of the base zoning if the additional units provided are affordable for households in the low-income category or below.
 - Bonus of 40 percent of the base zoning if the additional units provided are affordable for households in the moderate-income category or below.
 - Bonus of 20 percent of the base zoning if the first 10 percent of the additional units provided are affordable for households in the moderate-income category and the remaining 10 percent are affordable to households in the middle-income category.

3 Existing Conditions

Understanding the current real estate market conditions is critical to designing an effective development incentive program. This section summarizes the existing real estate market conditions affecting development in Bainbridge Island and City' incentive programs for affordable housing and TDR. Our analysis included both a market study and interviews with 12 local real estate professionals.

3.1 Program Utilization

The current incentive programs available for affordable housing and TDR have not been utilized as desired. Incentive zoning policies are intended to leverage new market-rate development for the production of public amenities. However, these policies can only work when new development is financially feasible. The structure of an incentive zoning program should make it economically attractive for developers to use the incentive under most market conditions.

The real estate market in Bainbridge Island has realized increasing growth and stronger market fundamentals, particularly during the last five years. However, other constraints have hindered the use of the City's affordable housing and TDR incentive program. Many of the limiting factors identified in the 2006 MAKERS/Community Attributes evaluation of the TDR program remain in place. Specific factors identified include the absence of a market mechanism and insufficient opportunities for demand to use the TDR credits. Furthermore, we learned in our conversations with developers that many are not even aware of the existence of the TDR program.

3.2 Real Estate Market Conditions

The real estate market trends and recent development examples point to a city that is seeing an increase in demand, primarily for housing development of all types. This uptick in demand has occurred relatively recently. For much of the 2010s, the city did not realize much new development following the effects of the recession in 2008. As a result, the housing supply has been lagging housing demand and rents and sales prices have been increasing, particularly over the last five years.

A continuation of these growth trends and historically low vacancies indicate there will likely be demand for more housing (single-family and multifamily) in the future. The resulting increase in population will also drive the demand for additional commercial space to provide goods and services.

For a development incentive program to be effective it needs to align with where development is occurring, the uses that are demanded, and the intensity of that development. Recent trends and market conditions in Bainbridge Island indicate there is an opportunity for the utilization of

development incentives. Appendix A includes a more detail summary of the market study. Key findings include:

- **Winslow Has the Most Potential for Future Development.** Winslow has realized much of the new growth in Bainbridge Island, which aligns with the City’s comprehensive plan. Winslow has the infrastructure, specifically water and sewer service, to accommodate future growth. Winslow is also an attractive location for development because of the proximity to the ferry terminal.
- **Neighborhood Centers have Limited Potential Due to a Lack of Infrastructure.** In the comprehensive plan, neighborhood centers are designated for more intense development. With the exception of Lynwood Center, a lack of infrastructure (primarily sewer service) limit the development potential of these areas. The capacity and use of development incentives within these areas will be tied to the provision of the necessary infrastructure.
- **Residential Uses Present the Best Opportunity for Utilizing Development Incentives.** Most of the recent development and permit activity in Bainbridge Island is for single-family housing. More recently, multifamily housing, particularly in Winslow, is also realizing sizable new developments. As a result, development incentives should focus on leveraging demand for these uses.
- **Residential Projects Will Want to Maximize Density.** Future projects may be looking to increase densities (i.e. smaller lots and more units per acre for single-family homes and more height and building area for multifamily projects). This demand can be leveraged to support both the purchase of development rights and the creation of affordable housing as part of a City’s development incentive programs.

3.3 Stakeholder Interviews

To supplement the market study, we interviewed 12 real estate professionals including developers, architects, affordable housing providers that work in Bainbridge Island. All of the stakeholders interviewed noted the increasing cost of housing in Bainbridge Island over the last several years. However, they also noted that increasing construction cost and land prices are making it more challenging for new projects to “pencil out.” Several common themes emerged from these interviews, which are summarized below.

- **Regulatory Barriers.** A number of interviewees expressed their wish for more flexibility in the zoning code, especially regarding density and height limitations. High minimum parking requirements was also noted as an issue in some zones (primarily those not by the Ferry Terminal).
- **Environmental Concerns.** Several interviewees expressed concerns about the environmental effects from increased development, primarily the loss of trees and open space. However, others thought the City prioritized environmental issues too much over housing affordability.

- **Limited Sewer, Sanitation, and Water Services.** All of the interviewees emphasized the limitations that the lack of sewer, sanitation, and water services imposed on development site designations outside of the Winslow core area, which limits the developable land available in the city.
- **Little familiarity with the TDR program.** In addition, we asked the interviewees about their knowledge of the City's transfer of development (TDR) program. Few people were familiar with the program even if they knew it existed. A majority of them revealed to possess little to no knowledge of this program.

When asked how they would recommend the City address these challenges, interviewees suggested that 1) more flexibility in the zoning codes, 2) reduced parking requirements especially for areas near the ferry terminal, 3) increased heights in the zoning code, 4) more incentives for open space, tree retention, and higher density development, 5) more sewer, water, and sanitation services outside of the Winslow core area, and 6) a better overall communication from the City Council on the island's growth plan.

4 Development Analysis

The central question of a development analysis for an incentive zoning program is whether the incentive offered (typically additional development capacity) creates enough value to cover the additional cost of construction and operations in addition to the cost of providing the public benefit required as part of receiving the incentive. For affordable housing, the cost to a developer is foregone rental income. For land conservations, the cost to a developer is the dollars to purchase the development right(s). To evaluate this question, ECONorthwest conducted a financial analysis of different building types within select zones. The analysis evaluated the financial viability of these buildings under the current base and density bonus provisions and hypothetical larger density bonus provisions. This section provides an overview of the method and assumptions used and the finding of the development analysis

4.1 Approach

Development feasibility is based on the difference of the potential value of a development project, less the costs to build it. If the value of a hypothetical project is higher than the total cost, which includes the developers profit requirements, the project is likely feasible in the current market. Exhibit 7 depicts this development equation and its pieces.

Exhibit 7. Financial Feasibility Development Equation



To calculate the value and costs, ECONorthwest used a pro forma analysis. A pro forma analysis models all of the costs of constructing a new building—including design, permit fees, site improvements, any developer fee, and contingencies—to arrive at a total cost for each building prototype. The pro forma analysis then models potential revenues the new building

would generate based on how much rent a building would generate in a year or the price if it was sold. Lastly, the analysis then applies an assumed rate of return to account for the profit a developer would require.

It is also important to keep in mind that development feasibility depends on several factors in addition to the assumed revenues, costs, and returns. The feasibility of any site can also be dependent on the individual developer and other idiosyncratic factors, such as when a developer bought the property, their ability to finance a project, and their tolerance for risk. Thus, the pro forma analysis is a snapshot of feasibility under current market conditions and typical development assumptions.

Key Financial Assumptions

The pro forma analysis used several key assumptions¹⁰ to calculate financial feasibility. Appendix B lists the specific assumptions for each prototype.

- Apartment rent: \$2.50 per square foot per month (or equivalent of \$2,500 a month for a 1,000-square foot two-bedroom apartment).
- Retail rent: \$25.00 per square foot per year.
- Townhome sales price: \$450.00 per square foot.
- Residential wood-frame construction costs: \$180 per square foot.
- Commercial concrete podium costs: \$240 per square foot.
- Surface Parking: \$5,500 per space.
- Ground floor Parking: \$30,000 per space.
- Underground Parking: \$60,000 per space.
- Land cost for NC zone: \$25.00 per square foot.
- Land cost for Central Core and Ferry Terminal Overlay zones: \$75.00 per square foot.
- Land cost for High School Road District: \$60.00 per square foot.
- TDR credit cost: \$75,000 per development right.

Building Types and Zones Analyzed

The feasibility analysis evaluates the financial performance of hypothetical developments in five different zones on Bainbridge Island (Neighborhood Center, Neighborhood Center/Residential-12, High School Road District 1, Ferry Terminal Overlay, and Central Core Overlay). These zones are areas designated as growth centers in the City's comprehensive plan, and the Council is interested in understanding what scale of development is currently feasible within these zones and what (if any) changes are needed to make the current incentives better utilized.

¹⁰ Sources: Rent based on local comparable developments and assumptions by ECONorthwest. Development costs based on discussions local builders, and returns assumption are from ECONorthwest.

Exhibit 8 compares the existing or current development standards for the base zoning and density bonus limits for zones included in the analysis.

Exhibit 8. Current or Existing Development Standards of Zones Analyzed

Zone	Base				Bonus			
	Units/Acre	Residential FAR	Mixed Use FAR	Height (Ft)	Units/Acre	Residential FAR	Mixed Use FAR	Height (Ft)
NC*	2.0	NA	NA	35	5.0	NA	NA	45
NC/R-12**	5.0	NA	NA	35	12.0	NA	NA	45
High School Road Districts	NA	0.3	0.3	35	NA	0.6	1.0	45
Ferry Terminal Overlay	NA	0.4	0.5	35	NA	1.1	1.3	45
Central Core Overlay	NA	0.4	1.0	35	NA	1.0	1.5	45

*Infrastrure available

**Mixed use building

Source: City of Bainbridge Island

Within these five zones, the development analysis evaluated the financial feasibility of a specific building type currently allowed within that zone. The analysis included three different building types: townhomes, garden apartments, and a residential mixed-use building. Exhibit 9 shows each building type analyzed for the corresponding zone.

Exhibit 9. Building Types Analyzed

Zone	Building Type	
Neighborhood Center	Townhome Max Base Density: 2 units/acre Max Bonus Density: 5 units/acre	
Neighborhood Center/R-12	Mixed-Use Building Max Base Density: 5 units/acre Max Bonus Density: 12 units/acre	
High School Road District – 1	Garden Apartment Max Base Density: 0.3 FAR Max Bonus Density: 0.6 FAR	
Ferry Terminal Overlay	Mixed-Use Building Max Base Density: 0.5 FAR Max Bonus Density: 1.3 FAR	
Central Core	Mixed-Use Building Max Base Density: 1.0 FAR Max Bonus Density: 1.5 FAR	

Source: ECONorthwest

Scenarios Analyzed

To assess the effects of zoning and development incentives on financial feasibility and the ability to create value to support the provision of public benefits, ECONorthwest analyzed the feasibility of the building types above under three scenarios:

- **Base zoning.** Assumes the building meets the base zoning requirement (density, height, etc.).
- **Current density bonus.** Assumes the same building maximizes the density bonus density and height limits.

- **Increased density bonus.** Assumes higher density and height limits than currently allowed.

In addition to analyzing each building type under the base zoning and density bonus scenarios, the analysis also assumed a couple of additional development incentives along with the current density bonus. Specifically, the two incentives factored into the analysis include:

- **Multifamily Tax Exemption (MFTE).** An 8-year property tax property tax abatement on the residential portion of new multifamily housing development. There are no specific affordability requires for the 8-year version under state statues.
- **Lower parking requirement.** Assumed minimum parking requirements are half of the current standards.

The analysis then compared the total value of each scenario for each of the five prototypes. As long as the value is positive (it exceeds the total costs including a developer’s assumed return), it can be used to support the realization of public benefits such as affordable housing or purchase of TDR credits. However, in order to for the incentive to be a true incentive for developers, the developer must also receive a share of the additional value.

4.2 Feasibility Comparison

Overall, the development analysis found that current base zoning and available incentives will likely not support the dedication of public benefits for TDR or affordable housing. While the current incentives increase the value of each of the building types analyzed, they do not create enough value to capture public benefits for the City in the land use code (e.g. land conservation and affordable housing). Further, the price for property in Bainbridge Island is relatively high due to the scarcity of infrastructure and limited development sites. Vacant properties typically cost less than developed parcels and are more likely to be financially feasible to develop at similar market conditions. As a result, the building type analyzed are not financially viable (even with the current incentives) on more costly developed sites.

Exhibit 10. Current Feasibility of Development by Zone

Scenario	Base Zoning	Current Bonus	Current Bonus
		- TDR	- IZ
NC - Multifamily	No	Yes	No
HS-1 - Multifamily	No	No	No
FERRY - Mixed Use	No	No	No
CORE - Mixed Use	No	No	No

Source: ECONorthwest

To improve financial feasibility, development projects need more physical scale, primarily through increasing the amount of building square feet and potentially increased building heights. To assess what scale and density are needed, ECONorthwest analyzed the same building prototypes and zones as in the baseline development analysis. This analysis assumed more building area and higher heights than currently allow under zoning.

The analysis also assumed a few other key changes in zoning standards and incentive program requirements including:

- Parking requirements are lower than currently required,
- A new 8-year MFTE program is in place, and
- 10 percent of all unit built are affordable for a household of one earning at least 80 percent of the area median income (the equivalent of \$54,000 a year).

Exhibit 11 shows the densities and development conditions likely necessary for development projects to provide a sizable amount of affordable housing and conservation benefits under current market conditions. Specifically, the table shows the estimated number of affordable units created and acres of land conserved based for a single project within that zone. The high estimate of land conserved assumes the sending site is zoned R-0.4, and the low estimate for land conserved assumes the sending site is zoned R-2.

Exhibit 11. Maximum Development Assumptions Evaluated by Zone and Estimated Benefits

	NC - Townhomes	NC/R-12 - Mixed Use	HS-1 - Multifamily	FERRY - Mixed Use	CORE - Mixed Use
Height	20	35	40	55	55
Density (Floor area ratio)	0.46	1.72	3.00	4.50	4.50
Density (Units per acre)	10.0	62.0	122.0	196.0	196.0
Parking (Spaces/Unit)	1.50	1.00	0.75	0.75	0.75
Affordable Units Created	1	6	6	18	9
Acres Conserved (High est.)	9.2	11.5	16.1	32.1	9.2
Acres Conserved (Low est.)	1.8	2.3	3.2	6.4	1.8

High estimate assume credits all purchased for land zoned R-0.4

Low estimate assume credits all purchased for land zoned R-2

Source: ECONorthwest

Development Analysis Summary

The development analysis found that current base zoning and available incentives will not support the provision of affordable housing units or purchase of TDR credits. While the current density bonus incentives do increase the value of each of the building types analyzed they do not create enough value to capture for public benefits (e.g. affordable housing and land conservation). Key findings include:

- Density limits are the primary impediment to development viability. To improve financial feasibility and utilization of the incentive programs, development projects need to be able to use development sites more efficiently and achieve more physical scale.
- Increasing maximum density creates a lot of value that can be used for subsidizing affordable housing and purchasing TDR credits.
- Lower parking requirements are also an important factor in how efficiently a building can use a site and the total cost of a project.

- Height limits are not an impediment to development under current market conditions. However, in the future under changing market conditions, an additional floor would allow more building square feet and more flexibility developing a site to provide open space on the site.

These findings align with the recommendations outlined in the Affordable Housing Task Force Final Report. The report recommends the City making code changes to increase density limits, building heights, and reduce parking requirements (Recommendation 1B).

5 Policy Options

Setting efficient regulatory and performance parameters for incentive zoning programs is a challenging endeavor. The city must balance the desire to leverage private development to deliver public benefits against additional costs imposed on the project. This challenge is compounded by ever changing market conditions, such as changes in construction costs, cost of capital, household incomes, land prices, and rent—all of which affect the financial viability of a project over time.

To increase the realization of public benefits the development analysis determined the City will need to make changes to its existing incentive program. The City has several strategic options to optimize its zoning provisions and increase the potential for development and the realization of TDR purchases and/or affordable housing units. All options will require the City to allow a sizable increase in the density allowed to create enough value for projects to provide the public benefits desired and still be financially viable.

Voluntary or Mandatory Affordable Housing Program

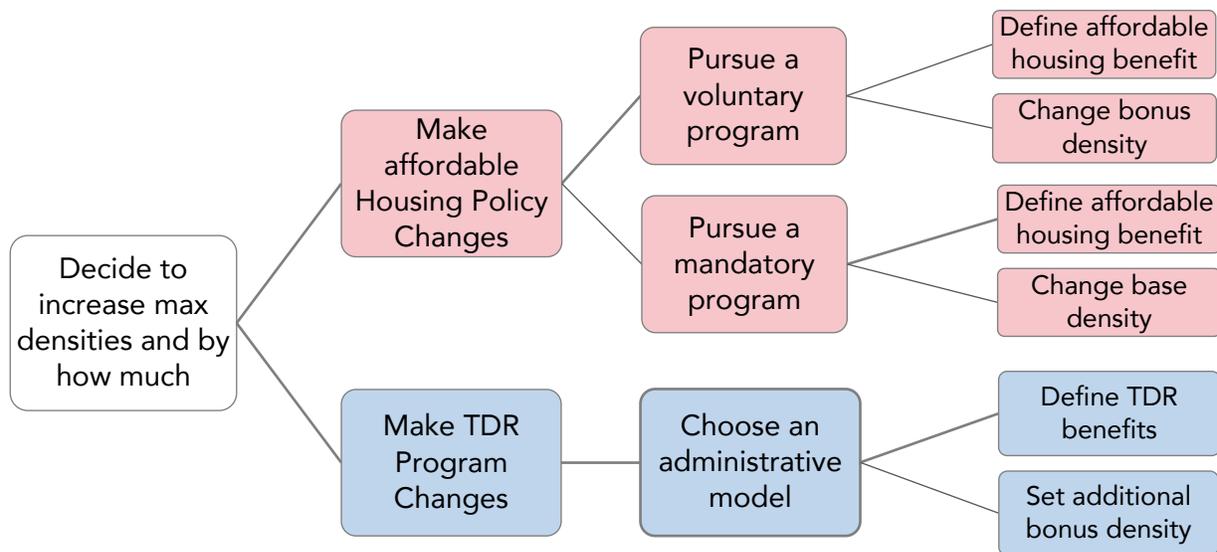
In addition to making the zoning changes described above, the City has several options to increase the provision of affordable housing units and/or purchase of TDR credits through how it defines the public benefits required to realize the incentives offered. The current TDR and affordable housing incentives function as separate programs. The City can continue to have them function separately and make changes to each so they work on their own. However, if desired, the City can link the programs so that both the provision of affordable housing and the purchase of TDR credits are realized from an individual project using the density bonus.

Exhibit 12 outlines the decision tree for making these policy decisions. For the affordable housing incentive program, an important, initial step is whether the City makes provisions for affordable housing voluntary or mandatory. The City currently has a voluntary program for affordable housing. However, the Affordable Housing Task Force Report recommended a mandatory program, pending the completion of this study (Recommendation 1A). For the TDR program, an initial step will be to define how the program is administered.

Subsequent steps will need to define the public benefit for affordable housing and TDR purchases required. The amount of affordable housing provided or TDR credits purchased determine what level of density is needed to support the provision of those public benefits¹¹. For example, a higher share of affordable units—10 percent compared to 5 percent—will require a higher level of density allowed so that projects are financially viable and get built. Thus, the base and bonus density limits for each approach will also differ.

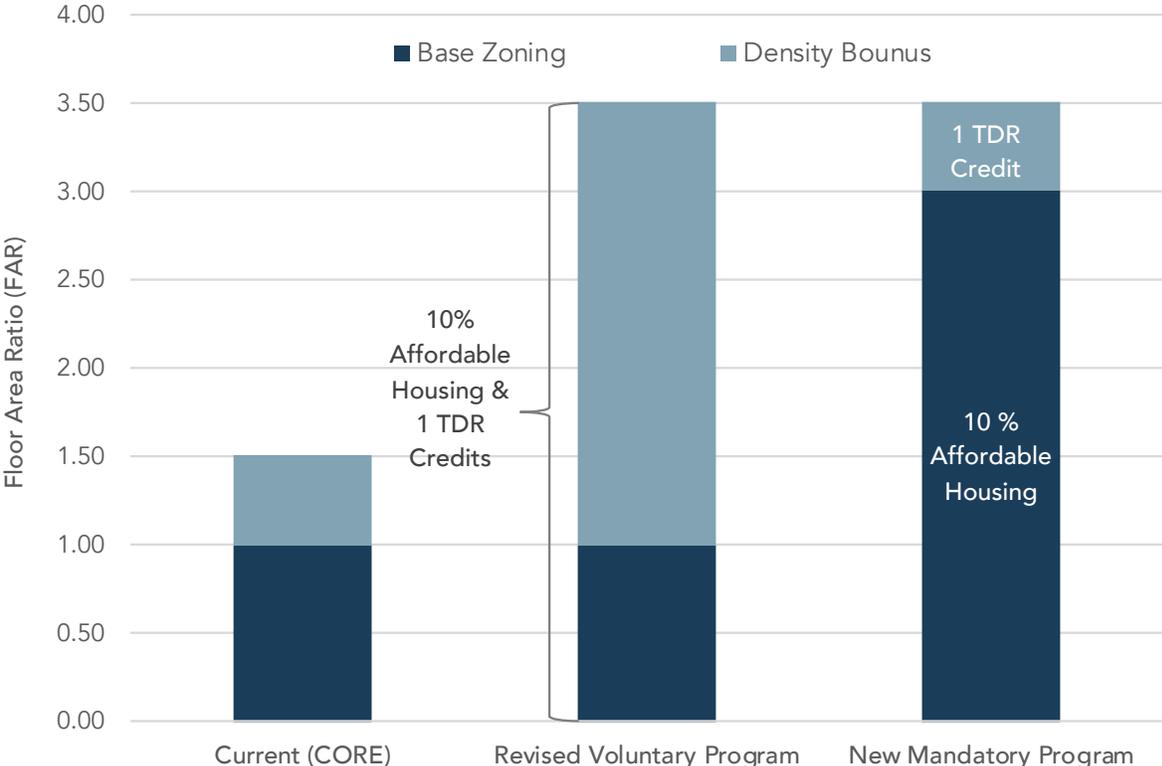
¹¹ RCW 36.70A.540

Exhibit 12. Strategic Options Decision Tree



The chart below shows the current FAR limits for a mixed use building in the Central Core Overlay zone and how FAR limits would likely need to change under a revised voluntary or new mandatory program. The number of affordable units built and TDR credits purchased would be different for mandatory program versus a voluntary program, even if the maximum density allowed is the same (e.g. 3.5 FAR).

Exhibit 13. Example FAR Limits for Mixed-Use Building in the Central Core Overlay Zone



Source: ECONorthwest

Voluntary Program. A revised version of this program would keep the base zoning the same and increase the density bonus (higher FAR limits and increased height). The value created through the increased density bonus can be divided between affordable housing and TDR purchases (50/50, for example). For our analysis, we assumed a development would make 10 percent of all units affordable and purchase at least one TDR credit to realize the density bonus.

Mandatory Program. A mandatory program would be more complicated. All development projects would be required to provide a defined share of affordable housing units. Although, small scale project can be exempted from the requirement. To ensure projects are financially viable (so units get built) the City would need to substantially increase the base zoning density and height limits. Even if the defined share of affordable housing was the same as the voluntary program (10 percent), the total number of affordable units provided would be slightly less because the size the building area that 10 percent applies to is smaller (a building area with 3.0 FAR compared to 3.5 FAR).

In addition, a TDR incentive (additional density or height increase above the newly increased base zoning) would be added to the mandatory affordable housing requirement to provide a mechanism for TDR credits to be purchased.

Other Tools, such as MFTE, can Support Incentive Programs

The City has a variety of other incentives it can use to ensure development feasibility as part of an incentive program in addition to increasing zoning capacity. Direct subsidies, tax abatements, and reduced parking requirements, which was mentioned above, are the most impactful. The Multi Family Tax Exemption (MFTE) program¹² is the one of the best options in Washington State that is available to the City. The Affordable Housing Task Force also recommended the City adopt an MFTE program (Recommendations 1C).

The MFTE is a property tax abatement on the residential portion of new multifamily housing development. There are two versions of the program: an eight-year abatement and a 12-year abatement. The 12-year abatement requires that at least 20 percent of the housing units are affordable to households earning 80 percent of the Area Median Income. The 8-year program does not have an affordability requirement, but it can be used in conjunction with an affordable housing incentive zoning program.

The Development Analysis evaluated the eight-year version of the MFTE and found that it added substantial value to projects. Thus, not including an MFTE as part of the City's incentive program would likely require increasing densities allowed to compensate for the lost value and/or reducing the public benefits required to maintain the feasibility of projects.

¹² RCW 84.14

Trade-off Between Incentive Maximums and Public Benefits

The central question of this analysis is whether additional zoning capacity creates enough value to cover the additional cost of construction and operations and still provide a defined percent of affordable units and purchase TDR credits. If additional zoning capacity does create enough value, what are the FAR and height maximums necessary for the incentive program to work under current market conditions and future market changes.

To assess what scale and density are needed, ECONorthwest analyzed the same building prototypes and zones as in the baseline development analysis. This analysis assumed more building area and higher heights than currently allow under zoning. The analysis also assumed the City implemented an MFTE program and reduced parking requirements, as discussed in the sections above.

Exhibit 4 shows the maximum building scale and density assumed, the number of affordable housing units created (assuming 10 percent of units designated as affordable¹³), and the range of acres conserved (depending on the zoning of the sending site¹⁴).

Exhibit 14. Maximum Development Assumptions Evaluated by Zone and Estimated Benefits

	NC - Townhomes	NC/R-12 - Mixed Use	HS-1 - Multifamily	FERRY - Mixed Use	CORE - Mixed Use
Height	20	35	40	55	55
Density (Floor area ratio)	0.46	1.72	3.00	4.50	4.50
Density (Units per acre)	10.0	62.0	122.0	196.0	196.0
Parking (Spaces/Unit)	1.50	1.00	0.75	0.75	0.75
Affordable Units Created	1	6	6	18	9
Acres Conserved (High est.)	9.2	11.5	16.1	32.1	9.2
Acres Conserved (Low est.)	1.8	2.3	3.2	6.4	1.8

Source: ECONorthwest

The development analysis results indicate the City would need allow for a substantial increase in floor area allowed for sizable provision of affordable housing and purchase of TDR credits under current market conditions. Current maximum bonus FAR limits (for mixed use development) in the Mixed-Use Town Center and High School Road District are 1.0 and up to 1.5 in the Central Core Overlay zone. These limits would have to be increased to at least 3.0 in the High School Road District and 45 in the Mixed-Use Town Center. More modest increases in height (going from 45 to 55 feet) may also be necessary.

¹³ Households earning 80 percent of the area median income and spending 30 percent or less of their income on housing including utilities.

¹⁴ Assuming an average value of \$75,000 per development right/credit.

Ultimately, for any revisions to the current incentive program, there is a trade-off between different options that the City will need to consider. Allowing more density and heights will allow the City to require a higher share of affordable housing, lower affordability levels, and/or more dollars for purchasing TDR credits. Conversely, lower density and height maximums will result in less affordable housing and fewer dollars used for TDR purchases. However, if the defined public benefits are set too high, the private market might wait until market dynamics change for development to occur. This challenge is encountered by every jurisdiction trying to calibrate an incentive zoning policy.

6 Considerations and Recommendations

The City’s current affordable housing incentive program and TDR program are separate incentives that compete among several other incentives and FAR purchase options available within Bainbridge Island. Neither of these programs have been utilized as originally desired. Our analysis found the current base and incentive zoning parameters are the primary barrier to the incentives working effectively.

To improve performance and the realization of public benefits, we recommend an incentive zoning framework that 1) prioritizes affordable housing and the purchase of TDR credits above other public benefits (public spaces, underground parking, etc.), and 2) maximizes the frequency and period of time that these two incentives would likely be used under a variety of changing market conditions. Broadly, there are six key changes the City can undertake to better support these two objectives.

1. **Allow a new maximum height and FAR densities.** We recommend increasing the density and height of buildings within designated growth centers. While our analysis did not identify the current height limits as barrier to the utilization of the current incentive program, we recommend increasing the current limit to allow an additional floor, so the program provides flexibility to be used under changing market conditions in the future.

We also recommend moving to an FAR-based density limit for the NC zone. The zone currently uses units per acres to define density. An FAR-based density limit would be consistent with the other growth center zones and provide more flexibility.

The table below summarizes the recommended maximum density and height limits for density bonuses by zone. Our analysis only looked at five zones with these areas. Additional analysis would be needed to determine the bonus maximums for the zones not studied.

Exhibit 15. Recommended Maximum Bonus Density and Height Limits

Zone	Current Bonus Density	Current Bonus Height	Recommended Bonus Density	Recommended Bonus Height
Neighborhood Center	5 unit/ac	45 feet	0.5 FAR	45 feet
Neighborhood Center/R-12	12 units/ac	45 feet	2.0 FAR	45 feet
High School Road District - 1	0.6 FAR	45 feet	3.0 FAR	45 feet
Ferry Terminal Overlay	1.1 FAR	45 feet	4.5 FAR	55-75 feet
Central Core	1.0 FAR	45 feet	4.5 FAR	55-75 feet

Source: ECONorthwest

2. **Reduce the other incentives available and focus on affordable housing and TDR.** The City currently offers incentives for several other public benefits including: providing underground parking, FAR purchases, providing on-site open space, tree preservation, historic structure preservation, etc.). Reducing competing options will prioritize the use of incentives for the affordable housing and TDR programs.

3. **Create an administrative model for the TDR program.** The current TDR program code does not identify a clear process by which a landowner or a developer can participate in the program. We recommend that the City creates both an administrative structure for the operation of the program as well as easily accessible informational resources to prospective users of the program. Until a robust market for TDR evolves in the City, we recommend a simple private buyer-seller model with public support. As program activity increases or if the City allocates funding to acquire TDR credits, the creation of a TDR bank would serve a useful purpose to augment the private market transactions. Additional resources will support the emergence of a marketplace, such as an online listing of landowners who wish to sell their development rights, electronic copies of application forms that users can download, and a dedicated webpage for the TDR program that explains the tool, identifies sending and receiving areas, illustrates the process for using the program, and gives appropriate City staff contact information.
4. **Establish a fee in-lieu option for the affordable housing and TDR incentive programs.** A fee in-lieu options would provide more flexibility for developments, particularly smaller projects. For example, as part of a revised TDR program the City could collect and use these funds for the purchase of development rights and conservation easements in Bainbridge Island.
5. **Decide to maintain a voluntary or establish a new mandatory affordable housing program.** We recommend maintaining a voluntary affordable housing incentive program. The base zoning density limits are relatively low. Thus, most future projects will likely take advantage of the affordable housing incentive if calibrated correctly. As discussed above, a voluntary program has the potential to yield more public benefits when used compared to a mandatory program as well.
6. **Establish an MFTE program.** We recommend an 8-year MFTE program. Our analysis showed that the MFTE added value for multifamily developments and it would be an additional incentive to support the viability of multifamily projects and the use of incentive programs. In addition, an 8-year program allow the City to set its own affordability requirements (both the share of affordable units and length of affordability). The 12-year MFTE program requires 20 percent of units are affordable for 12 years.
7. **Define the affordable housing and TDR benefits based on the new bonus density limits and other incentives.**
 - For affordable housing we recommend 10 percent set aside of all units built. Our analysis indicated that this share would be viable at the densities modeled. The City currently requires that all units built through the density bonus be affordable. Because the base zoning limits are relatively low, a high percent of all units are affordable, which had a sizable effect on financial feasibility.

- For TDR, the benefit to a developer is defined by an exchange rate: what additional value does a developer gain by purchasing one credit? No exchange rate is currently set by the program or code and this uncertainty deters participation. If the City is going to award density bonus on an FAR basis, the appropriate units to express an exchange rate is in additional square feet of building area per credit purchased. For example, for each TDR credit purchased, a developer may build an additional 2,000 square feet of floor area up to the FAR limit of 3.5. Further evaluation of conservation area land values is needed to calibrate an exchange rate that will drive demand for TDR.

In addition to the seven changes above, there are several small, less critical changes the City can pursue that also will help support the affordable housing and TDR incentive programs that we also recommend the City consider.

- Expand the receiving areas available for TDR credits. Residential zones, such as R-2.9 and R-3.5 could support the placement of TDR credits and conservation open space elsewhere on the island by allowing additional units in exchange for purchasing a TDR credit.
- Remove separate FAR limits for residential and commercial uses in mixed-use buildings. Instead, establish one, new FAR limit for the entire building by zone as discussed above.
- Reduce parking requirements to 1.0 space per unit. Maintain reduction of half for areas within 0.5 mile of ferry terminal, which would then allow 0.5 space per unit within 0.5 mile of ferry terminal.
- Expand the areas where denser development can be built to increase the number lower cost development sites available where projects would be financially viable. In addition to rezoning areas, this would include ensuring existing neighborhood centers have the infrastructure available to support the growth planned for those areas.

Appendix A – Real Estate Market Analysis

Introduction

The City of Bainbridge Island is evaluating its inclusionary zoning and transfer of development rights (TDR) programs to understand how these programs can be better utilized to support citywide efforts for land conservation and affordable housing development. Many cities use regulatory and financial incentives to realize public benefits. However, designing and implementing incentive programs is a complex process. Primarily, real estate market conditions change over time, which make it a challenge to calibrate incentive programs. In addition, existing “base” zoning requirements, such as parking standards or height limits, may not be aligned with the incentive program, making the program less effective. Lastly, private sector participants have different needs and goals making incentive program utilization inconsistent.

ECONorthwest and Forterra are working for the City of Bainbridge Island to evaluate the City’s transfer of development rights (TDR) and inclusionary housing programs, specifically. A key first phase of this effort is understanding the current real estate market conditions, which is critical to designing an effective development incentive program. Key questions for the real estate market assessment include:

- What uses and building types are in demand?
- What building forms and intensities are likely to be built in the current market?
- How much will likely be built on an annual basis?

Understanding the answers to these questions informs the evaluation of the City’s existing incentive provisions and informs the policy options the consultant team will analyze in subsequent tasks. The remainder of this memorandum is organized into three main sections.

- **Market Analysis** considers growth and development trends for different housing types and land uses.
- **Recent Development Examples** identifies recent comparable development in Bainbridge Island and their key characteristics.
- **Real Estate Demand Outlook** assesses the market readiness of different land uses and building types and their potential to utilize development incentives.

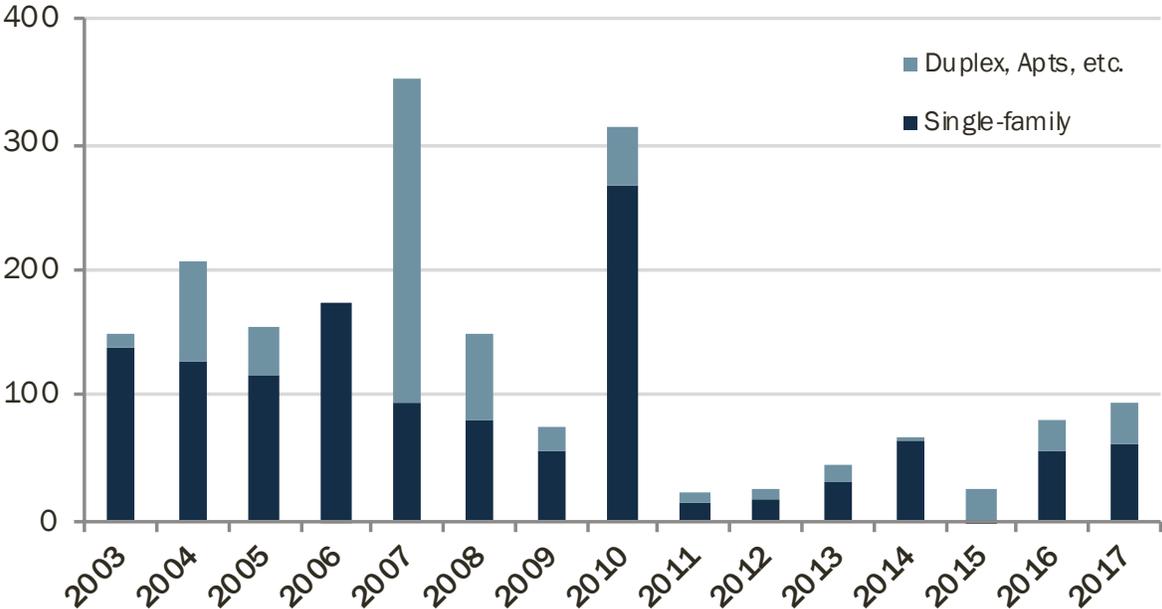
Market Analysis

This section summarizes the changes in real estate fundamentals for housing and office uses in Bainbridge Island.

Improving market conditions have spurred new real estate investment

Bainbridge Island has realized increasing growth and stronger market fundamentals, particularly during the last five years. The annual changes in the number of housing units built has increased over the last seven to eight years. However, the number of housing units built during the last several years is still below the pre-2008 recession averages. Since 2010, the city averaged about 50 new housing units per year. During the five years before the recession (2003-2008) the city averaged over 190 housing new units per year.

Exhibit 16. Annual Housing Units Change for the Last 15 Years, 2003-2017



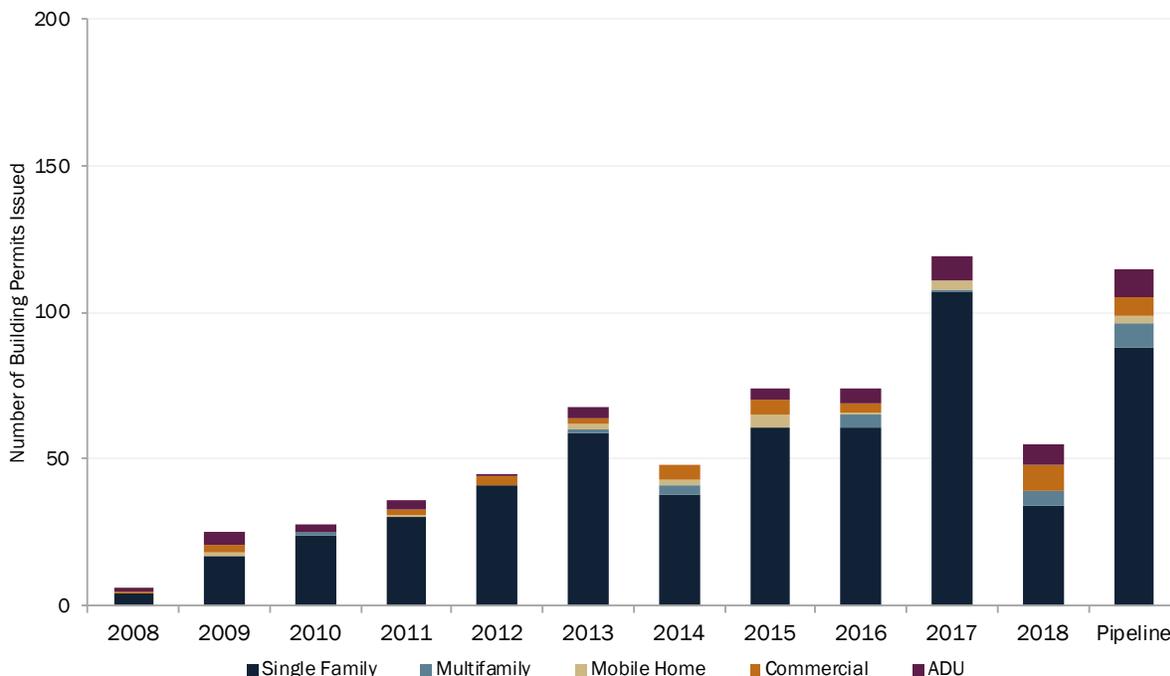
Source: Washington Office of Financial Management, 2018
 * Note, the 2010 estimate is likely excessively large to account for underestimates in previous years and to match the 2010 Census totals.

Building Permits Activity is Increasing

Building permit activity for new development in the City of Bainbridge has increased since 2008. During this period, the City of Bainbridge Island issued and finalized an average of approximately 58 permits annually, and 120 permits in 2017 alone. As of August 2018, the City has already issued 130 permits and finalized 55 of those permits. As a result, 2018 is likely to exceed the 2017 totals for building permits issued and finalized.

Single-family permits accounted for the greatest number of permits issued and finalized in a given year, with 75 percent of all permits issued. Exhibit 17 shows the number of permits issued for attached dwelling units, commercial, mobile homes, multifamily, and single-family units.

Exhibit 18. Permits Issued and Finaled* for All Uses, 2008-2018

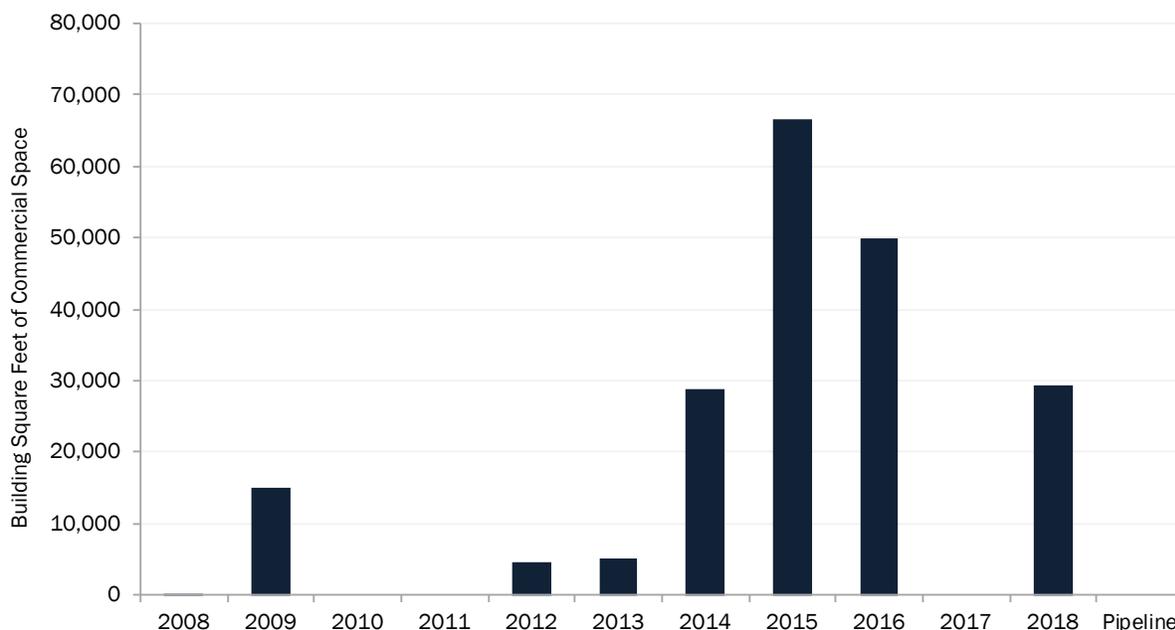


Source: City of Bainbridge Island

*Note: Pipeline includes permits that have been issued but not finaied.

Permits for commercial development increased by over 244,000 square feet since 2008. As of August 2018, 32,732 square feet of commercial square footage has been permitted.

Exhibit 19. Commercial Space Permitted, 2008-2018

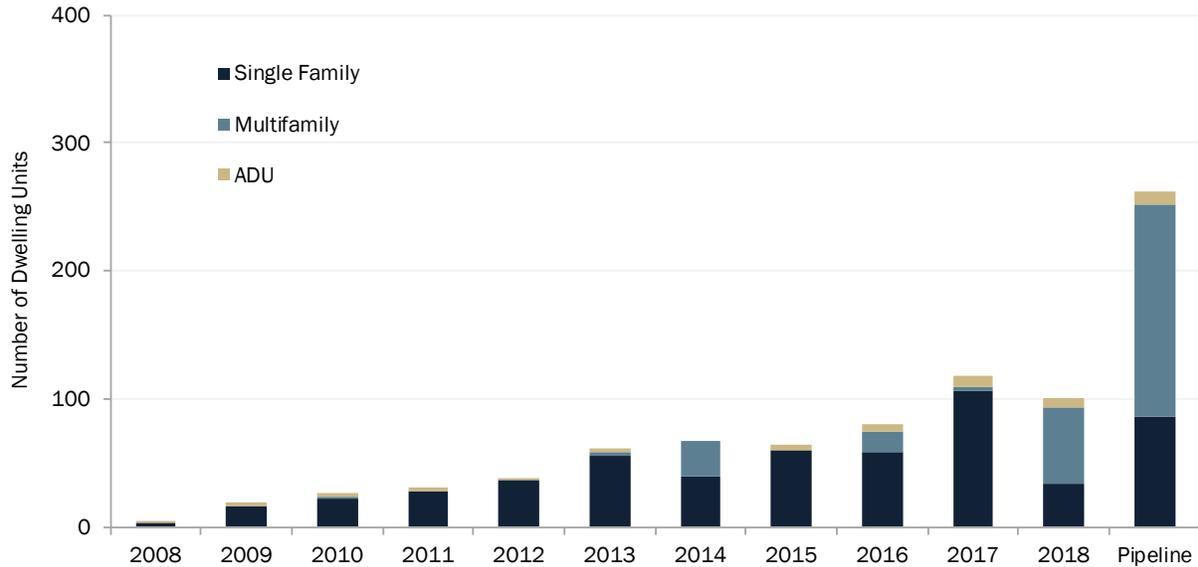


Source: City of Bainbridge Island

Exhibit 20 illustrates the trends for residential permits. Permits for single-family units steadily increased while multifamily dwelling units varied by year. In 2017, 120 housing units were

permitted. As of August 2018, 101 total units have been permitted, and 60 multifamily units have been permitted, exceeding the multifamily total for the previous ten years. Accessory dwelling units (ADUs) have remained consistent with fewer than 10 permits a year. The development pipeline (projects where permits have been issued but not finalized) is sizably larger, particularly for multifamily development, than the number of permits finalized in recent years.

Exhibit 20. Number of Residential Dwelling Unit Permitted, 2008-2018

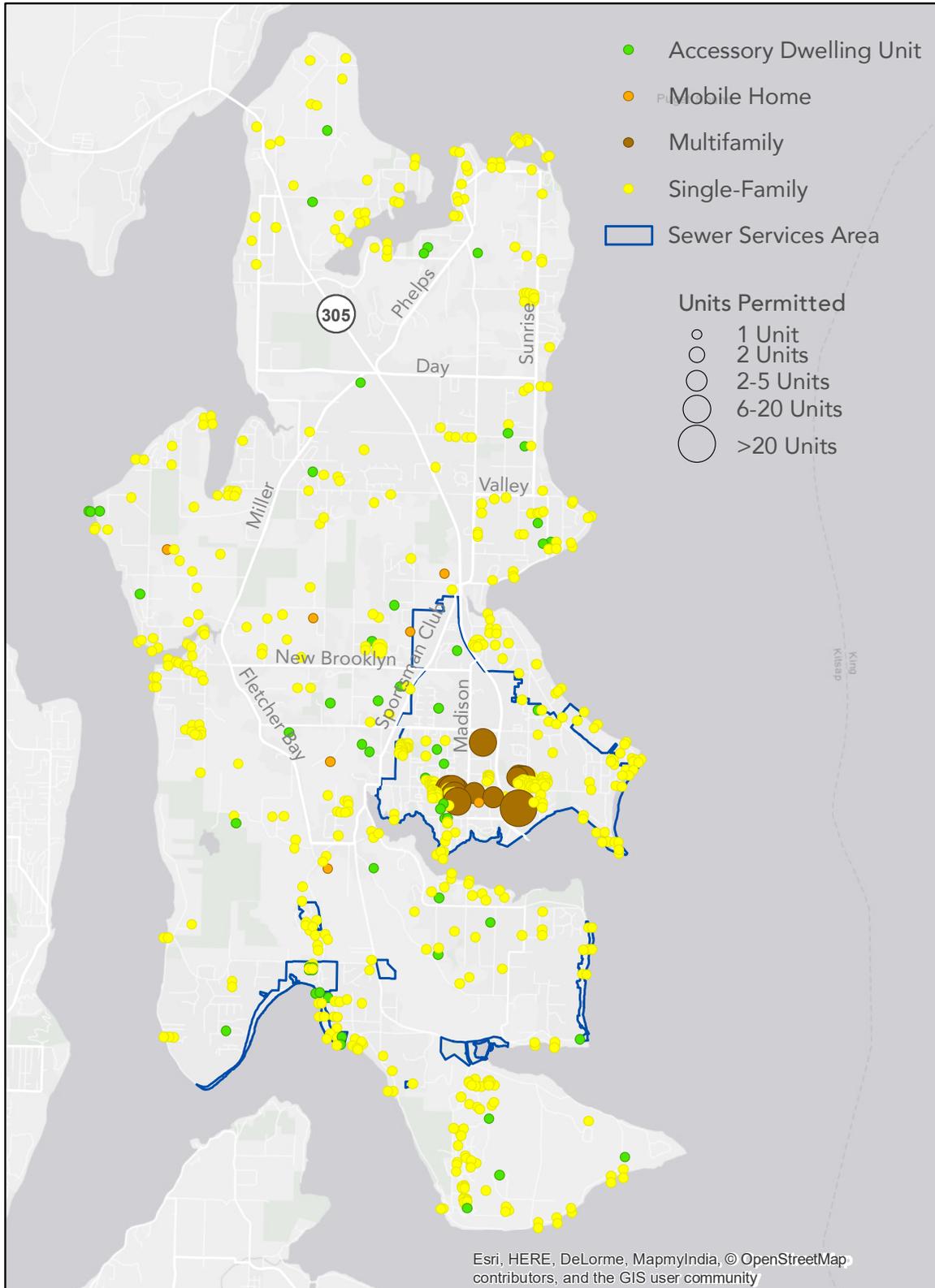


Source: City of Bainbridge Island

Note: Pipeline includes permits that have been issued but not finalized.

Exhibit 21 shows the geographic distribution of residential building permits. Permits for single-family homes and accessory dwelling units are distributed throughout the island. Multifamily permits are concentrated in Winslow where the zoning allows denser residential uses.

Exhibit 21. Location of Building Permits by Type, 2008-2018

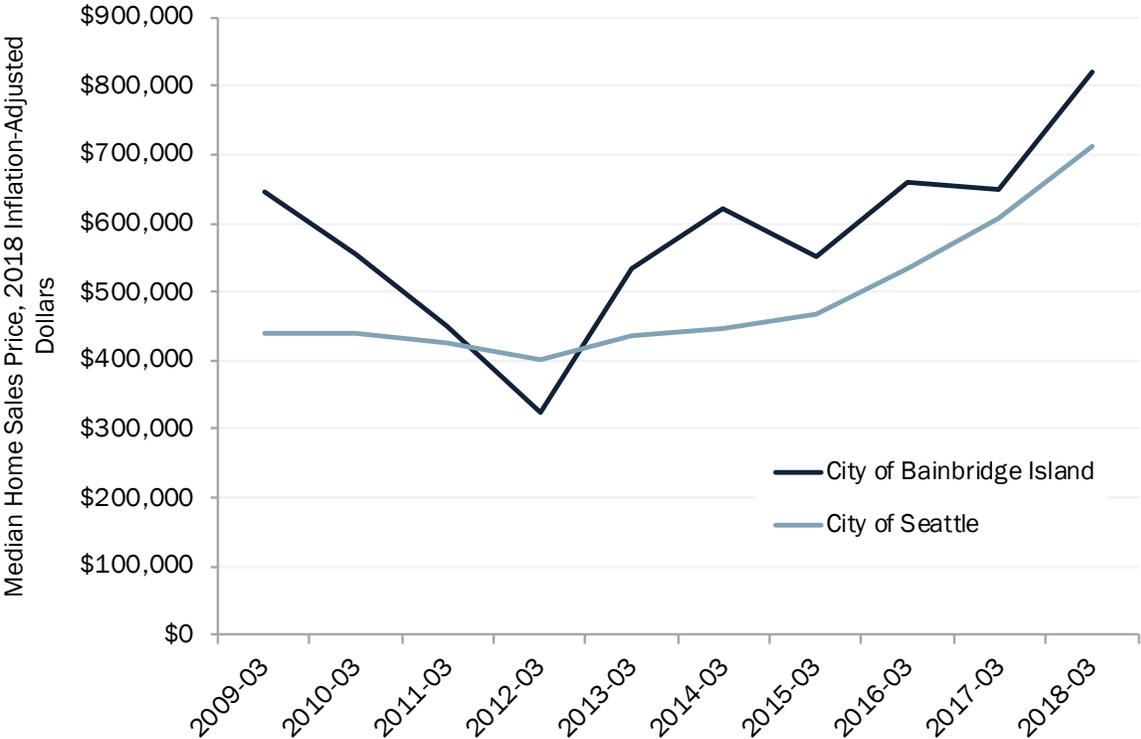


Source: City of Bainbridge Island

Large Increase in Home Prices

In inflation-adjusted dollars, the median sales price for a home in Bainbridge Island has increased 27 percent in the last ten years, from \$719,000 in 2009 to \$820,000 in 2018. Exhibit 2 compares the changes in adjusted sales prices in the month of March of each year to median sales prices in Seattle. While the adjusted sales price in Seattle is lower, with the exception of 2012, than the annual median sales price for Bainbridge Island, the sales prices in both cities follow a similar trend.

Exhibit 22. Adjusted Sales Prices in Bainbridge Island and Seattle MSA (2018 \$)



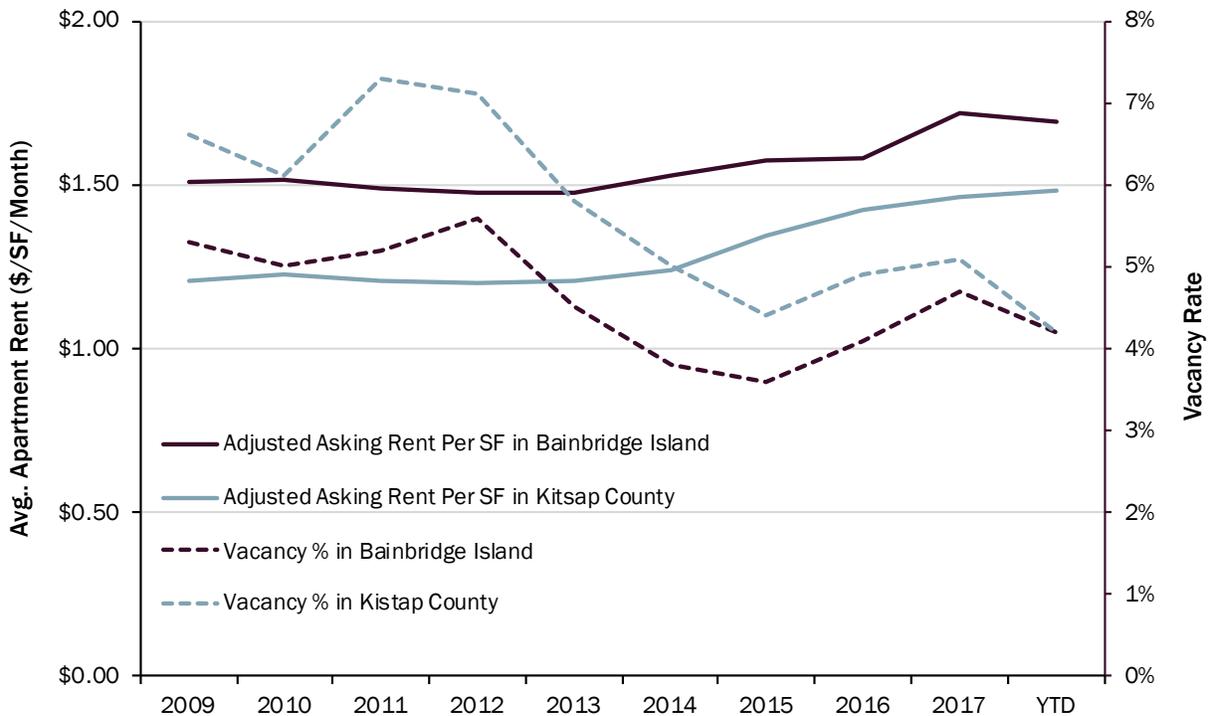
Source: Property Radar, 2018 & Zillow Research, 2018.

Apartment Market has Strong Fundamentals

The market fundamentals for apartments indicate a tightening market as vacancies have declined and average rents have increased. In 2009, the vacancy rates for multifamily housing units in Bainbridge Island and Kitsap County were over five percent and six percent, respectively, but both decreased to 4.2 percent in 2018. As vacancy rates have declined, competition for a limited supply of housing has increased, resulting in a rise in average rents.

In Bainbridge Island, the average asking rent per square foot a month has increased from \$1.51 per square foot to \$1.69 in 2018 adjusted for inflation. This represents a 12 percent increase in average rents in the last 10 years. A \$1.69 per square foot per month rent is equivalent of \$1,690 a month for a 1,000 square foot two-bedroom apartment. Average rents in Bainbridge Island are about 15 to 20 percent higher than those in Kitsap County, overall.

Exhibit 23. Average Apartment Rent Per SF and Vacancy, 2009 – 2018 (2018 \$)



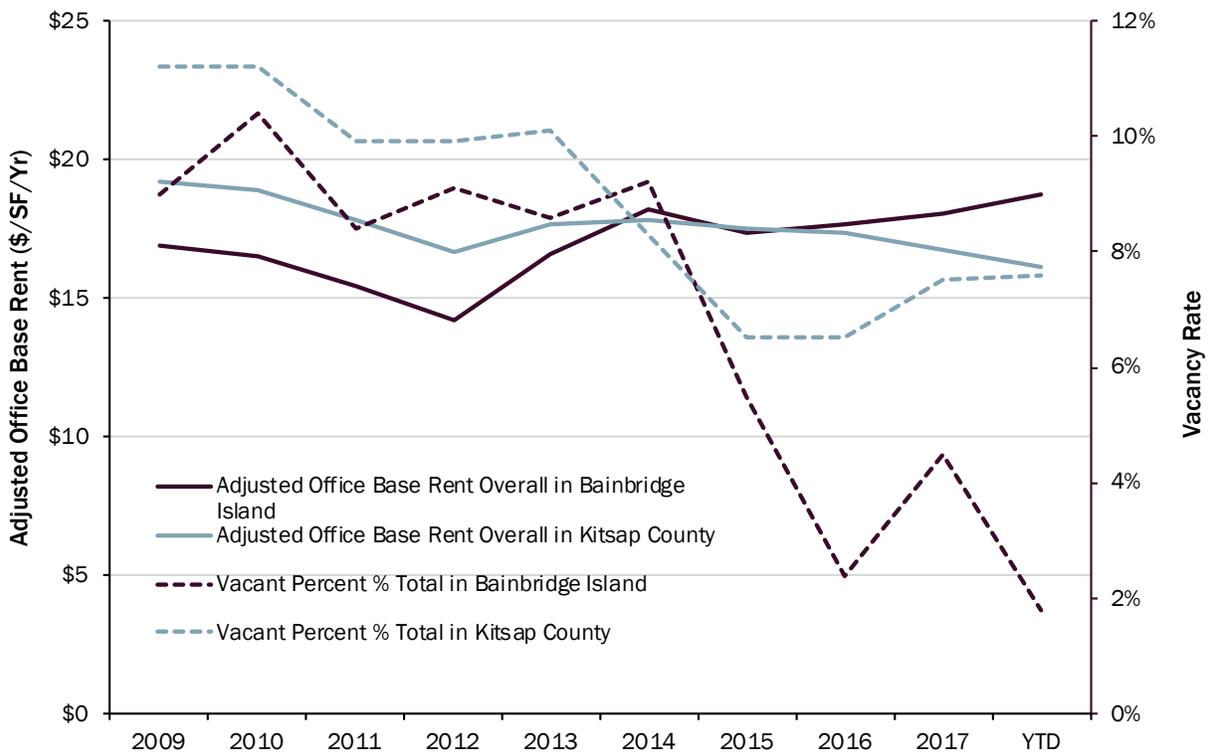
Source: CoStar, 2018

Office Market is Improving

The office market in Bainbridge Island has also shown improving fundamentals. Most notably, the vacancy rate for office units in Bainbridge Island dropped over eight percentage points from 2009 to 2018; the current vacancy rate is less than two percent. In response, average office base rents, as shown in Exhibit 24, have increased from a low of \$14.14 per square foot per year in 2012 to \$18.70 in 2018.

While the office vacancy rate also fell for Kitsap County, office rents have also declined. As of 2018, average office rents in Kitsap County are \$16.08 per square foot, which is now less than in Bainbridge Island.

Exhibit 24. Change in Vacancy and Adjusted Office Base Rent Overall, 2009 – 2018 (2018 \$)



Source: CoStar, 2018.

Recent Development Examples

Recent development projects in Bainbridge Island provide a benchmark on the scale and intensity of building the current market can support. Below are examples of projects recently built or currently under construction in Bainbridge Island.

Office Developments

Bainbridge Island CrossFit

9440 Sportsman Club Rd NE, Bainbridge Island

Year Built: 2017
Stories: 2
Size: 12,000 SF
Rent: \$13.00- \$16.00 / NNN
Current Tenants: CrossFit



Island Gateway

204 Ravine Ln NE, Bainbridge Island

Year Built: 2010
Stories: 3
Size: 37,626 SF
Rent: \$20.00 – 24.00 / SF
Vacancy Rate: 0%
Current Tentants: NA



Multifamily Developments

Bainbridge Landing

259 Ferncliff Ave., Bainbridge Island

Year Built: Under construction (delivers April 2019)

Units: 107

Stories: 4 | Buildings: 8

Parking: Ground-level and surface parking

Total Floor Area: 100,000 SF

Average Unit Size: 763 SF

Unit Mix: 70% (1-Bed)

30% (2-Bed)



Grow Community – Condos (The Tsuga)

221 Wyatt Way NE, Bainbridge Island

Year Built: 2015

Units: 15

Stories: 3 | Buildings: 1

Rent: NA

Total Floor Area: 21,174 SF

Parking: Ground-level and Surface Parking

Average Unit Size: 1,412 SF

Unit Mix: 100% (1-Bed)



Single Family Developments

Grow Community - Townhomes

Ambrose Lane NW, Bainbridge Island

Year Built: 2013

Square Feet: 1,500 – 1,800

Sales Price: \$600,000 - \$800,000



Winslow Grove

NE Winslow Grove Court, Bainbridge Island

Year Built: 2018

Square Feet: 3,000 – 4,200

Sales Price: + \$1.1 million



These project examples indicate:

- Office and commercial developments are likely to be modest in size (both height and total area).
- Current apartment rents and sales prices can support multi-story buildings with a mixture of ground-level and surface parking.
- A variety of single-family home types are in demand from larger single-family homes to smaller, more compact options, such as townhomes.

Demand Outlook

The real estate market trends and recent development examples point to a city that is seeing an increase in demand, primarily for housing development of all types. This uptick in demand has occurred relatively recently. For much of the 2010's the city did not realize much new development following the effects of the recession in 2008. As a result, housing supply has been lagging housing demand and rents and sales prices have been increasing, particularly the over the last five years.

A continuation of these growth trends and historically low vacancies indicate there will likely be demand for more housing (single-family and multifamily) in the future. The resulting increase in population will also drive the demand for additional commercial space to provide goods and services.

Outlook by Use

- **Single-Family Outlook.** Demand for single-family homes in Bainbridge Island is likely to continue. The city has a high quality of life and has direct access to downtown Seattle. As the region continues to grow and home prices in Seattle increase, Bainbridge Island will potentially see even greater demand.

As land values increase in Bainbridge Island, the market for single-family homes will increasingly be for both smaller housing forms (such as townhomes and small-lot homes) and larger, higher-end homes to justify the higher cost of land.

- **Multifamily Outlook.** Low vacancies and increasing rents indicate increasing demand for apartments as well. Recent multifamily developments are three- to four-stories with parking integrated into the ground level. As land values increase, taller apartment or mixed use buildings will likely be viable.
- **Office Outlook.** The office market in Bainbridge Island has also shown improving fundamentals. Office vacancies have decreased sizably from over ten percent in 2010 to less than two percent in 2018. In response, office rents in Bainbridge Island have increased at a rate of 2.1 percent a year to \$18.70 per square foot per year by 2018. Future office development will likely not be a primary driver of growth, and it is also likely to be oriented to smaller office users. As a result, future projects will likely continue to be small in scale.

Implications for Development Incentives

For a development incentive program to be effective it needs to align with where development is occurring, the uses that are demanded, and the intensity of that development. The real estate market conditions in Bainbridge Island indicate there is an opportunity for the utilization of development incentives.

Winslow has the most potential for future development

Winslow has realized much of the new growth in Bainbridge Island, which aligns with the City's comprehensive plan. Winslow has the infrastructure, specifically water and sewer service, to accommodate future growth. Winslow is also an attractive location for development because of the proximity to the ferry terminal.

Neighborhood Centers have Limited Potential Due to a Lack of Infrastructure

In the comprehensive plan, neighborhood centers are designated for more intense development. With the exception of Lynwood Center, a lack of infrastructure (primarily water and sewer service) limit the development potential of these areas. The capacity and use of development incentives within these areas will be tied to the provision of the necessary infrastructure.

Residential uses have the best opportunity for utilizing development incentives

Most of the recent development and permit activity in Bainbridge Island is for single-family housing. More recently, multifamily housing, particularly in Winslow, is also realizing sizable new developments. As a result, development incentives should focus on leveraging demand for these uses.

Residential projects will want to maximize density

Future projects may be looking to increase densities (i.e. smaller lots and more units per acre for single-family homes and more height and building area for multifamily projects). This demand can be leveraged to support both the purchase of development rights and the creation of affordable housing as part of a City's development incentive programs.

Appendix B – Pro Forma Assumptions

Construction Cost		
Podium Lobby/Amenities	\$ Per SF	\$125.00
Podium Commercial	\$ Per SF (including TI)	\$240.00
Residential Stick	\$ Per SF	\$180.00
Surface Parking Space	\$ Per space	\$5,500.00
Podium Parking Space	\$ Per space	\$30,000.00
Underground Parking Space	\$ Per space	\$60,000.00
Surface Parking	\$ Per SF	\$16.92
Podium Parking	\$ Per SF	\$72.29
Underground Parking	\$ Per SF	\$144.58
Open Space	\$ Per SF	\$5.00
Site Prep	\$ Per SF	\$2.00
Soft Costs	% of Hard Cost	25.00%
Contingency	% of Hard and Soft Costs	5.00%
Developer Fee	% fo Total Cost	3.50%
Land Value	\$ Per SF	\$25.00
TDR Purchase	Total \$	\$75,000.00
Sales Costs Incl. Commission	% of Sales Price	6.0%

Income		
Residential Rent	per Month	\$2.50
Residential Rent Affordable	per Month	\$1.75
Residential Sales Price	Per SF with 5% sales commission	\$450.00
Residential Sale Price Affordable	Per SF with 5% sales commission	\$150.00
Retail Rent	NNN per Year	\$25.00
Parking Rent	per Month	\$0.00
Residential Vacancy	% of Revenue	5.00%
Retail Vacancy	% of Revenue	0.00%
Residential Operating Cost	% of Rent	20%
Retail Operating Cost	% of Rent	35%
Prop Tax Rate	per \$1,000 Residential AV	\$7.44

Return	
Rental Return on Cost	5.50%
For-sale Return on Cost	20.00%

Appendix C – Median Income Limits



CITY OF BAINBRIDGE ISLAND 2018 MEDIAN INCOME LIMITS BY HOUSEHOLD SIZE BREMERTON-SILVERDALE MSA (HUD)

Maximum Income Limits by Category (BIMC 18.21.020)	Household Size							
	1	2	3	4	5	6	7	8
Extremely Low Income: ≤ 30% of Median Household Income	\$17,400	\$19,850	\$22,350	\$24,800	\$26,800	\$30,800	\$32,750	\$32,750
Very Low Income: 31% - 50% of Median Household Income	\$28,950	\$33,050	\$37,200	\$41,300	\$44,650	\$47,950	\$51,250	\$54,550
Low Income: 51% - 80% of Median Household Income	\$46,300	\$52,900	\$59,500	\$66,100	\$71,400	\$76,700	\$82,000	\$87,300
Moderate Income: 81% - 95% of Median Household Income	\$54,929	\$62,776	\$70,623	\$78,470	\$84,748	\$91,025	\$97,303	\$103,580
Middle Income: 96% - 120% of Median Household Income	\$69,384	\$79,296	\$89,208	\$99,120	\$107,050	\$114,979	\$122,909	\$130,838
100% of Median Household Income	\$57,820	\$66,080	\$74,340	\$82,600	\$89,208	\$95,816	\$102,424	\$109,032



CITY OF
BAINBRIDGE ISLAND

City Council Study Session Agenda Bill

MEETING DATE: February 4, 2020

ESTIMATED TIME: 30 Minutes

AGENDA ITEM: (9:00 PM) Code of Conduct and Ethics Program Review - Executive,

SUMMARY:

Council discussion of the City's Code of Conduct and Ethics Program.

AGENDA CATEGORY: Discussion

PROPOSED BY: City Council

RECOMMENDED MOTION: Council Discussion.

STRATEGIC PRIORITY: Good Governance

FISCAL IMPACT:

Amount:	
Ongoing Cost:	
One-Time Cost:	
Included in Current Budget?	

BACKGROUND: The City's Code of Conduct and Ethics Program establishes a Code of Conduct, a Code of Ethics, and provides a process to review possible violations of the Code of Conduct and of the Code of Ethics by Councilmembers and members of City Committees and Commissions. The Code of Conduct and Ethics Program also provides for an Ethics Board to assist with the administration of the program. More information is available online on the Ethics Board's webpage: <https://www.bainbridgewa.gov/231/Ethics-Board>.

On November 26, 2019, the City Council adopted Resolution No. 2019-26, revising the City's Code of Conduct and Ethics Program. The effective date of the revised program is February 1, 2020.

The adoption of Resolution No. 2019-26 followed extensive Council discussion throughout 2019, involving discussion of issues related to the program during at least 20 separate Council meetings.

In short summary, the adopted revisions are intended to clarify the procedure for the review of complaints submitted by members of the public as well as for review of requests for advisory opinions and waivers by Councilmembers and members of the City's various advisory groups. The revisions also expand the Ethics

Board from five to seven members and make several clarifications to the Code of Ethics included in the City's Code of Conduct and Ethics Program.

The following materials from the City Council and Ethics Board's April 30, 2019 Ethics Workshop are attached as background for the Council's discussion:

- The Cover Page for the April 30, 2019 Ethics Workshop;
- A copy of Greg Rubstello's presentation;
- A copy of Steve Gross' presentation;
- The Port Townsend Code of Ethics;
- HCR 4401, regarding code of conduct in the Legislature; and
- Resolution No. 2019-13, a previously considered, but never adopted, resolution proposing revisions to Article I of the Ethics Program.

Also attached is a staff memo outlining an outstanding Council discussion point from the November 26, 2019 Council Meeting that the Council previously tabled for discussion in 2020.

ATTACHMENTS:

[Resolution No. 2019-26 Updating the City's Ethics Program - Approved 112619](#)

[Staff Memo - Outstanding Discussion Point from November 26, 2019 Council Meeting](#)

[Cover Page - April 30, 2019 Ethics Workshop](#)

[Greg Rubstello - Ethics Workshop Presentation - April 30, 2019](#)

[Steve Gross - Ethics Workshop Presentation - April 30, 2019](#)

[Port Townsend Code of Ethics - Chapter 2.80 PTMC](#)

[HCR 4401 Regarding Code of Conduct](#)

[Resolution No. 2019-13 - Revising Ethics Program Related to Article I \(Previously Tabled by CC and Never Adopted\)](#)

FISCAL DETAILS:

Review by the Hearing Examiner under the Code of Conduct and Ethics Program, as needed, is anticipated to be charged at \$175/hour.

Facilitation of reconciliation by a trained mediator under the Code of Conduct and Ethics Program, as needed, is anticipated to be charged at \$150/hour.

Fund Name(s):

Coding:

RESOLUTION NO. 2019-26

A RESOLUTION of the City Council of Bainbridge Island, Washington, amending the ethics program for the City of Bainbridge Island in accordance with Chapter 2.07 BIMC.

WHEREAS, Chapter 2.07 BIMC provides that the City Council shall establish, by resolution or ordinance, an ethics program for the City of Bainbridge Island; and

WHEREAS, on May 10, 2006, the City Council passed Resolution No. 2006-25, adopting an ethics program for the City of Bainbridge Island; and

WHEREAS, the City Council has previously amended the ethics program through the passage of Resolution Nos. 2011-07, 2011-13, 2012-11, and 2018-10; and

WHEREAS, in 2019, the City Council thoroughly considered the City's ethics program, including discussions held during the May 28, July 2, July 23, August 6, August 20, September 17, October 22, and November 26, 2019 Council meetings; and

WHEREAS, the Ethics Board has reviewed and provided input to the City Council on proposed changes to the City's ethics program; and

WHEREAS, the City Council desires to update the City's ethics program and to provide a delayed effective date for the revised ethics program to give City staff and the Ethics Board time to update operating rules, forms, and training materials, as needed, to conform with and implement the revised ethics program.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BAINBRIDGE ISLAND DOES RESOLVE AS FOLLOWS:

Section 1. Repeal and Replacement of Ethics Program. The ethics program adopted by Resolution No. 2018-10 is hereby repealed in its entirety and replaced as shown on **Exhibit A**, which is attached hereto and incorporated herein by this reference as if set forth in full.

Section 2. Direction to Ethics Board. The Ethics Board shall not, without Council approval, consider any complaint, request for advisory opinion, or request for waiver until Section 1 of this resolution takes effect. The Ethics Board is directed to revise its operating rules, forms, and training materials, as needed, to conform with the Code of Conduct and Ethics Program included as **Exhibit A** to this resolution.

Section 3. Effective Date. Section 1 of this resolution shall take effect and be in force on February 1, 2020. Section 2 of this resolution shall take effect and be in force immediately upon passage.

PASSED by the City Council this 26th day of November, 2019.

APPROVED by the Mayor this 26th day of November, 2019.

By: 
Kol Medina, Mayor

ATTEST/AUTHENTICATE:

By: 
Christine Brown, CMC, City Clerk

FILED WITH THE CITY CLERK:	October 18, 2019
PASSED BY THE CITY COUNCIL:	November 26, 2019
RESOLUTION NO.	2019-26

Exhibit A: Code of Conduct and Ethics Program

Exhibit A
Code of Conduct and Ethics Program

**CITY OF BAINBRIDGE ISLAND
CODE OF CONDUCT AND ETHICS PROGRAM**

Resolution No. 2019-26

Effective Date: February 1, 2020

TABLE OF CONTENTS

Introduction	3
ARTICLE I - CODE OF CONDUCT	4
A. Preamble	4
B. Core Values.....	4
C. Ethics Principles.....	4
ARTICLE II - CODE OF ETHICS	6
A. Gifts and Compensation.....	6
B. Use of City Property by Councilmembers	7
C. Confidentiality	7
D. Conflict of Interest - General	7
E. Conflict of interest - After Leaving Elected City Office.....	9
F. Conflict of Interest - Members of City Committees or Commissions.....	9
G. Conflict of Interest - Family Members of Councilmembers.....	9
H. Conflict of Interest - Contractors.....	10
I. Conflict of Interest - Individuals Serving on City Committees and Commissions	10
J. Conduct of Public Meetings.....	10
K. Conflict of Interest - Individuals Serving on the Ethics Board	10
ARTICLE III - SUBMISSION AND REVIEW OF ETHICS COMPLAINTS, REQUESTS FOR WAIVERS, AND REQUESTS FOR ADVISORY OPINIONS	11
A. Submission of Ethics Complaints.....	11
B. Review of Article I Complaints.....	11
C. Review of Article II Complaints	13
D. Review of Complaints Concerning City Employees	15
E. Requests for Advisory Opinions	16
F. Waivers.....	17
G. Effect of Advisory Opinion or Waiver.....	17
ARTICLE IV - HEARING EXAMINER REVIEW AND POSSIBLE SANCTIONS	18
A. Hearing Examiner Review of Article II Complaints.....	18
B. Action by City Council upon Hearing Examiner’s Findings and Conclusion.....	19
ARTICLE V - ETHICS BOARD	20
A. Creation, Terms, and Appointments	20
B. Training Provided by the Ethics Board	21
C. Training Provided to the Ethics Board	22
D. Annual Report.....	22
ARTICLE VI - DEFINITIONS	23
ARTICLE VII - CITY COUNCIL REVIEW OF CODE OF CONDUCT AND ETHICS PROGRAM	26

CITY OF BAINBRIDGE ISLAND CODE OF CONDUCT AND ETHICS PROGRAM

All those associated with City government, including Councilmembers and members of City Committees and Commissions, seek to earn and maintain the public's confidence in the City's services and the public's trust in its government. To this end, the decisions and work of those associated with City government must meet the highest ethical standards. It is therefore the purpose of this program to:

1. Articulate the Code of Conduct that will guide the conduct of Councilmembers and members of City Committees and Commissions;
2. Establish a Code of Ethics for Councilmembers and members of City Committees and Commissions;
3. Provide training for Councilmembers and members of City Committees and Commissions on the Code of Conduct and the Code of Ethics;
4. Establish a system that enables individuals, Councilmembers, and members of City Committees and Commissions to seek guidance and assistance regarding possible violations of the Code of Conduct or of the Code of Ethics;
5. Provide a process to review possible violations of the Code of Conduct and of the Code of Ethics by Councilmembers and members of City Committees and Commissions; and
6. Maintain an Ethics Board to assist with the administration of the program.

This Code of Conduct and Ethics Program is intended to supplement state and federal law. As such, Councilmembers and members of City Committees and Commissions shall comply with all state and federal laws in the performance of their public duties. These laws include, but are not limited to, the following: the United States and Washington Constitutions; Chapter 42.23 RCW; and Chapter 42.17A RCW.

**ARTICLE I -
CODE OF CONDUCT**

A. Preamble

The City of Bainbridge Island has adopted this Code of Conduct, which consists of the Core Values and Ethics Principles detailed below, to promote and maintain the highest standards of personal and professional conduct among City Councilmembers and members of City Committees and Commissions. The optimal operation of democratic government requires that the City's government be fair and accountable to the people it serves. This Code of Conduct articulated in Article I applies to Councilmembers and members of City Committees and Commissions.

B. Core Values

1. Service, Helpfulness, Innovation

We are committed to providing service to the people of Bainbridge Island and to each other that is courteous, cost effective, and continuously improving.

2. Integrity

We treat one another with honesty and integrity, recognizing that trust is hard won and easily lost. We pledge to promote balanced, consistent, and lawful policies and directives, in keeping with that integrity and the highest standards of this community.

3. Equality, Fairness, Mutual Respect

We pledge to act with the standard of fairness and impartiality in the application of policies and directives and that of equality and mutual respect with regard to interpersonal conduct.

4. Responsibility, Stewardship, Recognition

We accept our responsibility for the stewardship of public resources, and our accountability for the results of our efforts, and we pledge to give recognition for exemplary work.

C. Ethics Principles

1. Obligations to the Public

Following the highest standards of public service, Councilmembers and members of City Committees and Commissions act to promote the public good and preserve the public's trust. In practice, this principle looks like transparency and honesty in all public statements and written communications.

2. Obligations to Others

In order to sustain a culture of ethical integrity, Councilmembers and members of City Committees and Commissions treat each other and the public with respect and are guided by applicable codes of ethics. In practice, this principle looks like:

- a. Councilmembers and members of City Committees and Commissions shall familiarize themselves with the ethical rules governing them (including Chapter 42.23 RCW and this Ethics Program) and obtain periodic education regarding such rules.
- b. Councilmembers and members of City Committees and Commissions shall, in all their interactions, conduct themselves in a manner that demonstrates civility and respect for others.

3. Obligations Regarding the Use of Public Resources

In recognition of the importance of stewardship, Councilmembers and members of City Committees and Commissions use and allocate public monies, property, and other resources in a responsible manner that takes into consideration both present and future needs of the community. In practice, this principle looks like:

- a. Councilmembers and members of City Committees and Commissions shall, to the extent possible, seek guidance regarding the use of public resources from staff and other experts, including legal advice from the City Attorney as appropriate, in order to ensure that public resources are used and conserved for the public good.
- b. Councilmembers and members of City Committees and Commissions shall ensure that paid experts and consultants who provide guidance regarding the use of public resources shall be impartial and free of conflicts of interest.

ARTICLE II - CODE OF ETHICS

Except where specifically stated, the rules articulated in Article II apply to Councilmembers and individuals serving on City Committees and Commissions.

A. Gifts and Compensation

1. Limitations on City-Related Gifts and Outside Compensation

Except as permitted under Subsections (2) and (3) below, no Councilmember or member of a City Committee or Commission, or any member of their immediate families, shall, directly or indirectly, accept any gift (as defined below) for a matter connected with or related to their services or duties with the City of Bainbridge Island or accept any non-City compensation for the performance or non-performance of those services or duties.

2. Exceptions to Gift Limitations

The following are exceptions to the limitation on gifts and may be accepted by those subject to Subsection (1) above:

- a. Unsolicited items of trivial value. "Items of trivial value" means items or services with a value of fifty dollars (\$50.00) or less, such as promotional t-shirts, pens, calendars, books, or other similar items.
- b. Gifts from other City officers, officials, or employees, or their family members on appropriate occasions.
- c. Gifts appropriate to the occasion and reasonable and customary in light of a familial, social, or official relationship of the giver and recipient, such as weddings, funerals, illnesses, holidays, and ground-breaking ceremonies.
- d. Campaign contributions as permitted and reported in accordance with law.
- e. Awards that are publicly presented by a nonprofit organization in recognition for public service if the award is not extraordinary when viewed in light of the position held by the recipient.
- f. Gifts offered while visiting other cities, counties, states, or countries or hosting visitors from other cities, counties, states, or countries, when it would be a breach of protocol to refuse the gift, provided that any such gifts received shall become property of the City.

g. Reasonable and necessary costs to attend a conference or meeting that is directly related to the official or ceremonial duties of the Councilmember or member of a City Committee or Commission, provided that any payment of substantial travel or lodging expenses by any person or entity regulated by the City or doing or seeking to do business with the City must be approved in advance by the Mayor or, if the Mayor is the recipient, by the Deputy Mayor or the Mayor Pro Tem.

3. Immediate Family Gift Exception

It shall not be a violation of this section for a member of a Councilmember's or a member of a City Committee or Commission's immediate family to accept a gift which arises from an independent relationship, if the Councilmember or member of a City Committee or Commission does not significantly benefit from the gift, and it cannot reasonably be inferred that the gift was intended to influence the Councilmember or member of a City Committee or Commission in the performance of their duties.

B. Use of City Property by Councilmembers

1. Except for limited incidental personal use or emergency circumstances, no Councilmember shall request, permit, or use City vehicles, equipment, materials, or property for personal use, personal convenience, or profit.
2. From the time that a Councilmember declares or publicly states that they intend to run for reelection until the conclusion of the respective general election, that Councilmember shall not request or direct that City funds be used to purchase any media (including newspaper, radio, television, social media, or bulk mailing) that contains the name or image of that Councilmember unless the names or images of all City Councilmembers appear in the media being purchased.

C. Confidentiality

Except as required by law, a Councilmember, former Councilmember, or current or former member of a City Committee or Commission shall not disclose or use privileged, confidential, or proprietary information obtained in executive session or otherwise in the course of their duties as a result of their position.

D. Conflict of Interest - General

1. Applications of Conflict of Interest

Except as permitted in Subsections (2) or (3) below, a Councilmember or member of a City Committee or Commission shall not take any direct official action on a matter if they, or a member of their immediate family:

- a. Has any substantial direct or indirect contractual employment related to the matter;

- b. Has other significant financial or private interest in that matter (which includes serving on a Board of Directors for any organization but does not, for Councilmembers, include appointing members to the Salary Commission); or
- c. Is a party to a contract or the owner of an interest in real or personal property that would be significantly affected by that matter. Taking direct official action on, or regarding, legislation of general application does not “significantly affect” real or personal property within the meaning of this Subsection.

2. Conflict of Interest Exceptions for Councilmembers

Subsection (1) above shall not apply when a Councilmember:

- a. Is required to take or participate in an action based upon the rule of necessity;
- b. Acts as their own representative before the City Council, Hearing Examiner, or any other City board, commission, or agency, provided that the individual does not also participate in any way in the deliberations or decision of the City Council, Hearing Examiner, or that board, commission, or agency related to that matter;
- c. Acquires an interest in bonds or other instruments of indebtedness issued by the City if acquired and held on the same terms available to the general public;
- d. Officially participates in the development and adoption of the City's budget; or establishes the pay or benefit plan of City officers, officials, or employees;
- e. Makes decisions on any legislation of general application unless these actions directly affect, or appear to affect, the official's or immediate family member's employment; or
- f. Serves on the governing body of an organization or entity as part of their official duties as a Councilmember of the City.

3. Conflict of Interest Exceptions for Members of City Committees and Commissions

Subsection (1) above shall not apply to a member of a City Committee or Commission:

- a. Who takes direct official action, as a member of a City Committee or Commission to which that member was appointed based on that member's ownership or lease of certain real property or of that member's ownership of a business located in a certain area of the City, that results in a conflict of interest under Subsection (1) above due solely to the fact of that member's ownership or lease of the certain real property or of that member's ownership of the business located in a certain area of the City providing the basis for that member's appointment to the City Committee or Commission; provided that the member fully discloses the basis for the conflict of interest under Subsection (1) during each meeting of the City Committee or Commission in which the conflict of interest under Subsection (1) occurs or may occur;

b. Who fully disclose the basis for the conflict of interest under Subsection (1) above on the public record of the City Committee or Commission and the Committee or Commission votes to allow the member to participate in the discussion or the vote; or

c. Is required to take action or participate in an action based upon the rule of necessity.

4. Disclosure for Councilmembers

All Councilmembers are required to comply with the Washington State Public Disclosure Commission requirements for financial disclosure. In addition, all Councilmembers shall publicly disclose their financial interest in any matter that comes before them. All Councilmembers shall annually complete a conflict of interest statement to be submitted to the City Clerk by April 15th.

E. Conflict of Interest - After Leaving Elected City Office

1. For two (2) years after leaving elected City office, no former Councilmember shall obtain employment in which they will take direct or indirect advantage of matters on which they took direct official action during their service with the City. This includes contractual negotiations or solicitation of business unavailable to others.

2. For two (2) years after leaving elected City office, no former Councilmember shall engage in any action or litigation in which the City is involved, on behalf of any other person or entity, when the action or litigation involves an issue on which the person took direct official action while in elected City office.

F. Conflict of Interest – Members of City Committees or Commissions and Employment

While serving on a City Committee or Commission, and for two (2) years after leaving such position, no member of a City Committee or Commission shall obtain employment in which they will take direct or indirect advantage of matters which they, as a member of a City Committee or Commission, recommended to the City Council. This includes applying for positions or contracts with the City when the City Committee or Commission on which the member served recommended funding such position or contract.

G. Conflict of Interest - Family Members of Councilmembers

1. Appointment of Family Members

Unless they obtain a waiver from the Ethics Board, no Councilmember shall appoint or hire a member of their immediate family for any type of employment with the City. This includes, but is not limited to, full time employment, part time employment, permanent employment, temporary employment, and contract employment.

2. Supervision of Family Members

No Councilmember shall supervise or be in a direct line of supervision over a member of their immediate family. If a Councilmember is placed in a direct line of supervision of a member of their immediate family, they shall have three (3) months to come into compliance or to obtain a waiver pursuant to Subsection (3) below.

3. Waivers

Waivers from this section may be sought from the Ethics Board to allow a member of the immediate family to be hired or to be in the direct line of supervision of a member of the immediate family. Procedures to consider such a waiver are set forth in Article III.

H. Conflict of Interest - Contractors

Every major contractor submitting bids to the City shall affirm that neither the contractor nor any agent of the contractor has made any prohibited gift to a Councilmember who is involved in direct official action on the bid or has a relationship to such Councilmember that would create a conflict of interest for that Councilmember under this Code of Conduct and Ethics Program.

I. Conflict of Interest - Individuals Serving on City Committees and Commissions

Individuals serving on City Committees and Commissions shall sign a conflict of interest statement upon appointment and reappointment.

J. Conduct of Public Meetings

1. Meetings involving Councilmembers or City Committees and Commissions should be conducted in a manner that maximizes transparency of relationships among individuals or groups that could affect decision-making.
2. Meetings of the City Council and City Committees and Commissions shall have a standing agenda item for disclosure of possible conflicts of interest. Members are encouraged to disclose relationships with persons and issues on the agenda, including potential conflicts of interests. If necessary, discussion among the members may be undertaken to judge the significance of these relationships and whether a possible conflict of interest exists.

K. Conflict of Interest – Individuals Serving on the Ethics Board

No member of the Ethics Board shall participate in the review of complaints or requests for advisory opinions relating to the conduct of a Councilmember where that member of the Ethics Board is or was a member of a political action committee that supports, supported, opposes, or opposed the election or reelection of the Councilmember in question.

**ARTICLE III -
SUBMISSION AND REVIEW OF ETHICS COMPLAINTS, REQUESTS FOR WAIVERS,
AND REQUESTS FOR ADVISORY OPINIONS**

A. Submission of Ethics Complaints

1. Any individual may submit to the City Clerk an ethics complaint alleging violations of one of the following:
 - a. The Code of Conduct (Article I) by a Councilmember or a member of a City Committee or Commission;
 - b. The Code of Ethics (Article II) by a Councilmember or a member of a City Committee or Commission; or
 - c. The ethics standards contained in the City of Bainbridge Island Employee Manual by a City employee other than the City Manager.
2. Each complaint must include the name and address of the complainant, along with a detailed statement of facts, supported by a declaration in compliance with RCW 9A.72.085, on a form supplied by the City Clerk.
3. To facilitate timely review under this Ethics Program, each complaint may only allege violations of one of the three standards listed in Subsection (A)(1) above. To the extent that an individual believes multiple standards were violated, the individual may submit multiple complaints.

B. Review of Article I Complaints

1. The City Clerk shall refer complaints alleging one or more violations of the Code of Conduct (Article I) by a Councilmember or a member of a City Committee or Commission, except for complaints concerning members of the Ethics Board, to the Ethics Board for review in accordance with Subsection (2) below. The City Clerk shall refer complaints alleging one or more violations of the Code of Conduct (Article I) by a member of the Ethics Board to the Hearing Examiner, who shall review the complaint in accordance with Subsection (2) below in place of the Ethics Board.
2. Upon receipt of a complaint, the Ethics Board shall make a threshold determination as to whether or not the complaint is reasonably credible and whether or not the facts asserted in the complaint, even if true, would constitute a violation of the Code of Conduct (Article I).
 - a. If the Ethics Board determines that the complaint lacks reasonable credibility, the Ethics Board shall dismiss the complaint, take no further action on it, and provide, following legal review, a written threshold determination to the City Clerk. Reconciliation shall not occur regarding a complaint dismissed under this Subsection. The City Clerk shall provide the threshold determination to the complainant and respondent and publish it along with the complaint.

b. If the Ethics Board determines that the facts stated in the complaint, even if true, would not constitute a violation of the Code of Conduct (Article I), then the Ethics Board shall dismiss the complaint, take no further action on it, and provide, following legal review, a written threshold determination to the City Clerk. Reconciliation shall not occur regarding a complaint dismissed under this Subsection. The City Clerk shall provide the threshold determination to the complainant and respondent and publish it along with the complaint.

c. If the Ethics Board determines that the complaint is reasonably credible and that the facts asserted in the complaint, if true, would constitute a violation of the Code of Conduct (Article I), then the Ethics Board shall provide, following legal review, a written threshold determination to the City Clerk. The City Clerk shall provide the threshold determination to the complainant and respondent and refer the complaint to a trained mediator for reconciliation as described below.

3. As soon as practicable following receipt of a threshold determination under Article III, Subsection (B)(2)(c), the City Clerk, or designee, shall schedule the time and place for reconciliation of the complaint.

4. To facilitate timely reconciliation, the City Manager is authorized to, as needed, negotiate, execute, or amend a contract with the Dispute Resolution Center of Kitsap County, or other similar firm or organization, for the provision of trained mediators suitable for facilitating reconciliation to resolve complaints.

5. Reconciliation shall occur at the time and place scheduled. However, if the complainant refuses to participate in reconciliation, then no reconciliation shall be scheduled, and no further action shall be taken on the complaint. If the respondent refuses to participate in reconciliation, then no reconciliation shall be scheduled. In circumstances where the respondent refuses to participate in reconciliation, the City Clerk shall, except for complaints concerning members of the Ethics Board, instead refer the complaint to the Ethics Board for review and issuance of an advisory opinion in accordance with Article III, Subsections (B)(5)(a)–(g). For complaints concerning members of the Ethics Board, the City Clerk shall instead refer such complaints to the Hearing Examiner, who shall review the complaint and issue an advisory opinion in accordance with Article II, Subsections (B)(5)(a)–(g), in place of the Ethics Board.

a. The Chair of the Ethics Board shall provide the respondent with a reasonable period of time to submit a written response to the complaint supported by a declaration in compliance with RCW 9A.72.085.

b. The Ethics Board shall then review the complaint and response, if submitted. The Ethics Board's review shall be limited to the complaint and the response, if submitted. In the course of reviewing a complaint, the Ethics Board may request clarification of the complaint by the complainant or of the response by the respondent; provided that if the Ethics Board obtains clarification of the complaint, the Ethics Board shall give the

respondent the opportunity to review the clarification and to provide an additional written response. However, the Ethics Board shall not engage in other fact-finding.

- c. If, in reviewing the complaint and response, a question of fact exists, the Ethics Board shall identify the existence of the question of fact in its advisory opinion.
- d. After reviewing the matter, the Ethics Board shall, following legal review, issue an advisory opinion, which shall be forwarded to the City Clerk for publication along with the complaint and response, if submitted. The City Clerk shall provide notice to both the complainant and respondent of the issuance of the advisory opinion.
- e. If, during the process of reviewing a complaint alleging a violation of the Code of Conduct (Article I), the Ethics Board determines that an additional violation of the Code of Conduct (Article I) may have occurred or a violation of the Code of Ethics (Article II) may have occurred, then the Ethics Board may choose to note that possibility in its advisory opinion. However, the Ethics Board shall not on its own initiative pursue review of an additional violation of the Code of Conduct (Article I) or a violation of the Code of Ethics (Article II) without the approval of the City Council. "Additional violation of the Code of Conduct (Article I)" means a violation of the Code of Conduct (Article I) that was not included in the complaint being reviewed.
- f. The Ethics Board shall strive to complete its review and issue an advisory opinion within 45 business days from the date that the City Clerk forwarded the request to the Ethics Board. If review takes longer than 45 business days, the Ethics Board in its advisory opinion shall specify the reasons for why additional time was needed.
- g. Advisory opinions shall be viewed as educational only. The purpose of such an opinion is to provide an educational opinion to Councilmembers, members of City Committees and Commissions, and the public on what type of conduct is generally expected from Councilmembers and members of City Committees and Commissions.

C. Review of Article II Complaints

1. The City Clerk shall refer complaints alleging one or more violations of the Code of Ethics (Article II) by a Councilmember or a member of a City Committee or Commission, except for complaints concerning members of the Ethics Board, to the Ethics Board for review in accordance with Subsections (2)-(6) below. The City Clerk shall refer complaints alleging one or more violations of the Code of Ethics (Article II) by a member of the Ethics Board to the Hearing Examiner for review in accordance with Subsections (7)-(11) below.
2. Upon receipt of a complaint, the Chair of the Ethics Board shall provide the respondent with a reasonable period of time to submit a written response to the complaint supported by a declaration in compliance with RCW 9A.72.085.
3. The Ethics Board shall review any complaint forwarded to it by the City Clerk and any response submitted by the respondent. The Ethics Board shall not engage in other fact-

finding. However, in the course of reviewing a complaint, the Ethics Board may request clarification of the complaint by the complainant or of the response by the respondent.

4. After reviewing the complaint and the response, if one was submitted, the Ethics Board shall, following legal review, take one or more of the following actions and inform the complainant, the respondent, and the City Clerk accordingly:

- a. Refer the complaint back to the City Clerk if the complaint alleges violations of the Code of Conduct (Article I) rather than alleged violations of the Code of Ethics (Article II);
- b. Determine that the complaint lacks reasonable credibility;
- c. Determine that the facts stated in the complaint, even if true, would not constitute a violation of the Code of Ethics (Article II);
- d. Determine that the facts stated in the complaint, even if true, would not constitute a material violation of the Code of Ethics because any possible violation was inadvertent or minor or has been adequately cured, such that further proceedings on the complaint would not serve the purposes of the Code of Ethics (Article II);
- e. Hold the complaint for action at a future time if the matter is the subject of litigation; or
- f. Determine that, based on the submissions of the complainant and the respondent, review by the Hearing Examiner is warranted.

5. The Ethics Board shall strive to complete its review within 45 business days from the date that the City Clerk forwarded the complaint to the Ethics Board. If review takes longer than 45 business days, the Ethics Board in its determination shall specify the reasons why additional time was needed.

6. If the Ethics Board determines that, based on the submissions of the complainant and the respondent, review by the Hearing Examiner is warranted, the Board shall, following legal review, forward its determination, along with the complaint and response, to the complainant, respondent, and the City Clerk. The City Clerk will then forward the Board's determination and associated materials to the Hearing Examiner for review and further proceedings in accordance with Article IV.

7. Upon receipt of a complaint, the Hearing Examiner shall provide the respondent with a reasonable period of time to submit a written response to the complaint supported by a declaration in compliance with RCW 9A.72.085.

8. The Hearing Examiner shall review any complaint forwarded to it by the City Clerk and any response submitted by the respondent. The Hearing Examiner shall not engage in other fact-finding. However, in the course of reviewing a complaint, the Hearing Examiner may

request clarification of the complaint by the complainant or of the response by the respondent.

9. After reviewing the complaint and the response, if one was submitted, the Hearing Examiner shall take one or more of the following actions and inform the complainant, the respondent, and the City Clerk accordingly:

- a. Refer the complaint back to the City Clerk if the complaint alleges violations of the Code of Conduct (Article I) rather than alleged violations of the Code of Ethics (Article II);
- b. Determine that the complaint lacks reasonable credibility;
- c. Determine that the facts stated in the complaint, even if true, would not constitute a violation of the Code of Ethics (Article II);
- d. Determine that the facts stated in the complaint, even if true, would not constitute a material violation of the Code of Ethics because any possible violation was inadvertent or minor or has been adequately cured, such that further proceedings on the complaint would not serve the purposes of the Code of Ethics (Article II);
- e. Hold the complaint for action at a future time if the matter is the subject of litigation; or
- f. Determine that, based on the submissions of the complainant and the respondent, further proceedings under Article IV are warranted.

10. The Hearing Examiner shall strive to complete their review within 45 business days from the date that the City Clerk forwarded the complaint to the Hearing Examiner. If review takes longer than 45 business days, the Hearing Examiner in its determination shall specify the reasons why additional time was needed.

11. If the Hearing Examiner determines that, based on the submissions of the complainant and the respondent, further proceedings under Article IV are warranted, the Hearing Examiner shall forward its determination, along with the complaint and response, to the complainant, respondent, and the City Clerk. The City Clerk will then schedule further proceedings in accordance with Article IV.

D. Review of Complaints Concerning City Employees

1. The City Clerk shall refer complaints concerning City employees to the City Manager.
2. The City Manager shall review any ethics complaint forwarded by the City Clerk and determine the appropriate course of action to address the complaint including, as applicable, authorizing such investigations as may be necessary to determine whether a violation has occurred, consistent with state law as well as relevant policies, procedures, and collective bargaining agreements.

3. Upon making a determination that no violation of ethics rules has occurred, the City Manager shall provide a written response regarding the determination to the complainant.
4. Upon making a determination that a violation of ethics rules has occurred, the City Manager or other appropriate City officer shall take action as guided by state law and relevant policies, procedures, and collective bargaining agreements.
5. In the event of a violation, the City Manager shall provide a response to the complainant outlining the substance of the violation and the action taken, subject to governing rules regarding confidentiality articulated in state law, City policy, and collective bargaining agreements.
6. Apparent violations of law shall be reported to the appropriate authorities, as applicable.

E. Requests for Advisory Opinions

1. To the extent described below, the following individuals or bodies may submit to the City Clerk a request for an advisory opinion from the Ethics Board:
 - a. A Councilmember or member of a City Committee or Commission may request an advisory opinion from the Ethics Board as to whether their own behavior has violated or might in the future violate the Code of Conduct (Article I) or the Code of Ethics (Article II).
 - b. The City Council may request an advisory opinion from the Ethics Board regarding City policies or practices in relation to the Code of Conduct (Article I) or the Code of Ethics (Article II).
 - c. City Committees and Commissions may request an advisory opinion from the Ethics Board regarding operating rules or practices in relation to the Code of Conduct (Article I) or the Code of Ethics (Article II).
 - d. A Councilmember may request an advisory opinion from the Ethics Board concerning the applicability of the Code of Ethics (Article II) to hypothetical circumstances and/or situations related to the actions, or potential actions, of a Councilmember or a member of a City Committee or Commission.
2. Requests for advisory opinions must be submitted to the City Clerk on a form supplied by the Ethics Board. The Ethics Board shall, following legal review, submit finalized advisory opinions to the City Clerk for publication
3. The grant of authority in this section is supplemental to, and does not change, the authority granted to the Ethics Board in Section B above.

F. Waivers

Councilmembers may request a waiver from the Ethics Board of the conflict of interest restrictions related to the hiring of and supervision over family members, as provided by Article II, Section F. Such requests shall be submitted in writing to the City Clerk, who shall refer them to the Ethics Board. Once finalized, the Board shall, following legal review, provide its response to the City Clerk, who shall publish both the request and the Board's response.

G. Effect of Advisory Opinion or Waiver

An individual who receives a waiver, or who acts in reliance on an advisory opinion, shall not later be found to have violated the Code of Conduct (Article I) or the Code of Ethics (Article II) if the individual acts in a manner consistent with that advisory opinion or waiver.

**ARTICLE IV -
HEARING EXAMINER REVIEW
AND POSSIBLE SANCTIONS**

A. Hearing Examiner Review of Article II Complaints

1. The City Clerk shall provide written notification to the complainant and the respondent of the time, date, and place of the hearing before the Hearing Examiner at which the complaint concerning alleged violations of the Code of Ethics (Article II) will be reviewed.

2. Hearings conducted by the Hearing Examiner shall be informal and held in accordance with rules of procedure adopted by the Hearing Examiner, except to the extent that such rules conflict with the terms of this Ethics Program. The respondent may be represented by legal counsel. The City Attorney shall designate special counsel to present the Code of Ethics violations charges and case. The respondent and special counsel may present and cross examine witnesses and give evidence before the Hearing Examiner. The Hearing Examiner may also call witnesses and compel the production of books, records, papers, or other evidence needed. To that end, the Hearing Examiner may issue subpoenas and subpoenas duces tecum at the request of the respondent, special counsel, or their own initiative. All testimony shall be under oath administered by the Hearing Examiner. The Hearing Examiner may adjourn the hearing from time to time in order to allow for the orderly presentation of evidence.

3. The Hearing Examiner or designee shall prepare an official record of the hearing, including all testimony, which shall be recorded by electronic device, and exhibits; provided that the Hearing Examiner or designee shall not be required to transcribe such records unless presented with a request accompanied by payment of the cost of transcription.

4. Within 20 business days after the conclusion of the hearing, the Hearing Examiner shall, based upon a standard of proof of clear and convincing evidence, make findings of fact and conclusions of law. If the Hearing Examiner determines that the alleged Code of Ethics violation(s) have not been proven, the Hearing Examiner shall dismiss the complaint. If the Hearing Examiner determines that one or more Code of Ethics violation(s) are proven, the Hearing Examiner shall forward the matter to the City Council for a determination regarding the appropriate level of sanctions to be imposed for the Code of Ethics (Article II) violations. In either event, a copy of the findings and conclusions shall be forwarded to the City Clerk, for distribution to the City Council, and, by registered mail, to the person who made the complaint and to the respondent at addresses as given by such persons to the Hearing Examiner.

B. Action by City Council upon Hearing Examiner's Findings and Conclusion

1. Within 45 business days of receipt of the Hearing Examiner's findings and conclusions that sustain a Code of Ethics violation, the City Council shall schedule an executive session to consider the findings and conclusions, hear from the respondent, and deliberate upon the appropriate level of civil sanction(s) to be imposed, if any, except to the extent that the respondent requests that they be heard in open public session.
2. The Council may take no formal action or, by majority vote of the Council (not including the respondent, if a Councilmember, who shall not participate in said vote) at an open public meeting, may impose any of the following sanctions in response to a sustained violation of the Code of Ethics:
 - a. Admonition: An admonition shall be a verbal non-public statement made by the Mayor, Deputy Mayor, or Mayor Pro Tem to the Councilmember or member of a City Committee or Commission who has violated the Code.
 - b. Reprimand: A reprimand shall be a letter prepared by the City Council, signed by the Mayor, Deputy Mayor, or Mayor Pro Tem, and directed to the Councilmember or member of a City Committee or Commission who has violated the Code.
 - c. Censure: A censure shall be a written statement administered personally by the Mayor, Deputy Mayor, or Mayor Pro Tem to the Councilmember or member of a City Committee or Commission who has violated the Code violation. The Councilmember or member of a City Committee or Commission shall appear at a time and place directed by the City Council to receive the censure. The censure shall be given publicly and the official who has violated the Code shall not make any statement in support or opposition thereto or in mitigation. A censure shall be deemed administered at the time it is scheduled whether or not the Councilmember or member of a City Committee or Commission appears as required.
 - d. Other sanctions: Any sanction imposed under this Ethics Program is in addition to and not in lieu of any other penalty, sanction, or remedy which may be imposed or sought according to law or equity.
3. The City Clerk shall forward, by registered mail, a copy of the findings, conclusions, and sanctions, if imposed, to the complainant and to the respondent at addresses as given by both persons to the City Clerk. Following approval by the Council, the City Clerk shall publish the written findings, conclusions, and sanctions, if imposed.

**ARTICLE V -
ETHICS BOARD**

A. Creation, Terms, and Appointments

1. Membership of Ethics Board

The Ethics Board consists of seven members appointed in accordance with this section.

2. Qualifications of Board Members

- a. Members of the Board shall represent a diverse set of backgrounds and interests.
- b. At least one member of the Ethics Board shall be a former judicial officer or have expertise in ethics acquired through education or experience.
- c. Members appointed or reappointed after the effective date of Resolution No. 2019-26, updating the Ethics Program, shall not, while serving on the Ethics Board, also simultaneously be employees or officers of the city or individuals appointed to another city committee or commission.

3. Method of Appointment

- a. Members of the Ethics Board shall be nominated by the Mayor and confirmed by the City Council by a supermajority vote of at least five Councilmembers.
- b. The Mayor and City Council shall work cooperatively to ensure that any person who is nominated has the required support of the City Council. Nominations shall be presented at meetings of the City Council in which all seven Councilmembers are present, unless exceptional circumstances exist (e.g., a Council vacancy exists and has not yet been filled, or other good cause).

4. Terms of Appointment

- a. Board members shall be appointed to terms of three years; however, the first two members nominated by the Mayor and confirmed by the City Council shall initially serve one-year terms to achieve staggered ending dates.
- b. If a member is appointed to fill an unexpired term, that member's term shall end at the same time as the term of the person being replaced.
- c. Each member shall continue to serve until a successor has been appointed, unless the member is removed or resigns.

5. Removal of Board Members

- a. The absence of any member of the Board from three (3) consecutive meetings, unless the Board has excused the absence for good and sufficient reasons as determined by the Board, shall constitute a resignation from the Board.
- b. The City Council may remove a member for inappropriate conduct before the expiration of the member's term. Before removing a member, the City Council shall specify the cause for removal and shall give the member the opportunity to make a personal explanation.

6. Compensation

Members of the Ethics Board shall serve without compensation. Members may be reimbursed for reasonable expenses pursuant to the rules of the City and as approved by the City Manager or their designee.

7. Rules

The Ethics Board may, by majority vote, adopt reasonable operating rules consistent with this Ethics Program. The City Council reserves the right to modify such operating rules at its discretion.

8. Consultation with City Attorney

The Ethics Board shall consult with the City Attorney's Office or special counsel appointed by the City Attorney's Office regarding legal issues which may arise in connection with the Board's duties and functions under this Ethics Program.

9. Liaison to the Ethics Board.

A representative of the City Attorney's Office shall attend Ethics Board meetings and serve as the liaison to the Ethics Board. No Councilmember shall serve as a liaison to the Ethics Board.

B. Training Provided by the Ethics Board

The Ethics Board shall perform the following training related duties:

1. At least every two years, the Ethics Board shall prepare and distribute a pamphlet describing the Code of Conduct (Article I) and Code of Ethics (Article II) to all Councilmembers and members of City Committees and Commissions, after review of the pamphlet by the City Attorney's Office. The Ethics Board shall ensure that all new Councilmembers and members of City Committees and Commissions receive a pamphlet on this Code of Ethics.

2. The Ethics Board shall develop and present a training course on the Code of Conduct and the Code of Ethics to be presented annually to all Councilmembers and members of City Committees and Commissions.

C. Training Provided to the Ethics Board

The Ethics Board shall include all requests for training for the coming year in the Board's annual report to the City Council, and the Council will determine what training to approve, if any.

D. Annual Report

By February 15 of each year, the Ethics Board shall submit an annual report to the City Council summarizing its activities during the previous calendar year and work plan for the following year. The report shall include any recommendations for modifying the Code of Conduct and Ethics Program as well as all training requested by the Ethics Board.

ARTICLE VI - DEFINITIONS

For purposes of the Ethics Program, the following definitions shall apply.

“City Committees and Commissions” and “City Committee or Commission” mean all advisory boards, commissions, committees, and task forces created or appointed by the City Council.

“Confidential Information” means (a) specific information, rather than generalized knowledge, that is not available to the general public on request; or (b) information made confidential by law.

“Direct official action” means any of the following:

1. For Councilmembers and members of City Committees and Commissions, taking action, as defined by RCW 42.30.020, in an open public meeting.
2. For Councilmembers and members of City Committees and Commissions, directly, or indirectly through a proxy, doing the following: negotiating or recommending for or against a contract, purchase order, lease, concession, franchise, grant, or other similar instrument in which the City is a party.
3. For Councilmembers and members of City Committees and Commissions, directly, or indirectly through a proxy, doing the following: recommending for or against the approval of a permit, or other similar City approval or authorization, issued by the City. However, direct official action does not include the submittal, to the City, of a permit application by a Councilmember or a member of a City Committee or Commission or the appeal of a denial of such a permit application by the City. Direct official action includes actions taken by a Councilmember or a member of a City Committee or Commission to use or attempt to use their position to obtain special privileges or exemptions in the processing, or review on appeal, of their permit application.
4. For Councilmembers, appointing or terminating employees (i.e., the City Manager) or appointing or removing members of City Committees and Commissions.

Direct official action does not include acts that do not affect the disposition or decision with respect to the matter. Additionally, a Councilmember or member of a City Committee or Commission who recuses herself or himself in lieu of taking action, as defined by RCW 42.30.020, in an open public meeting is not exercising direct official action.

“Direct line of supervision” means the supervisor of an employee and the supervisor of an employee's supervisor.

“Fact-finding” means any action to gather facts or other evidence not submitted by a complainant in a complaint or a clarification to a complaint or by a respondent in a response or a clarification to a response. However, “fact-finding” does not include review by the Ethics Board of official video or audio recordings of meetings of the City Council or of City Committees and Commissions as well as review by the Ethics Board of the official minutes of such meetings.

“Gift” means any favor, reward, or gratuity and any money, good, service, travel, event ticket, lodging, dispensation, or other thing of value that is given, sold, rented, or loaned to a person without reasonable compensation and that is not available to the general public on the same terms and conditions. Any honoraria or payment for participation in an event will be considered a gift.

“Immediate family” means husband, wife, son, daughter, mother, father, grandmother, grandfather, grandchildren, brother, sister, domestic partner, or spouse of the above. The term includes any minor children for whom the person, or their domestic partner, provides day-to-day care and financial support. A "domestic partner" is an unmarried adult, unrelated by blood, with whom an unmarried officer, official, or employee has an exclusive committed relationship, maintains a mutual residence, and shares basic living expenses.

“Legislation of General Application” means any legislative act, including regulations, policies, ordinances, resolutions, and motions, of general application, as opposed to legislative acts that affect only a particular person or individual or a small group of similarly situated persons or individuals.

“Major Contractor” means any person, corporation, company, firm, business, or other entity doing business over \$5,000 with the City under one contract or annually.

“Political Action Committee” means a legal entity, other than a natural person, that raises, spends, receives, or contributes money to support or oppose the election of one or more candidates for elected office at the local, state, or federal levels.

“Question of Fact” means a factual dispute between the complainant and the respondent concerning an issue that is material to a determination as to whether a violation of the Code of Conduct (Article I) exists.

“Reconciliation” means mediation between a complainant and a respondent facilitated by a trained mediator.

“Rule of Necessity” shall be interpreted and defined in accordance with RCW 42.36.090, which provides: In the event of a challenge to a member or members of a decision-making body which would cause a lack of a quorum or would result in a failure to obtain a majority vote as required by law, any such challenged member(s) shall be permitted to fully participate in the proceeding and vote as though the challenge had not occurred; if the member or members publicly disclose the basis for disqualification prior to rendering a decision. Such participation shall not subject the decision to a challenge by reason of violation of the appearance of fairness doctrine.

**ARTICLE VII -
CITY COUNCIL REVIEW OF CODE OF CONDUCT
AND ETHICS PROGRAM**

This Code of Conduct and Ethics Program shall automatically expire, and no longer be in force or effect, 12 months from the effective date of Section 1 of Resolution No. 2019-26, unless it is expressly renewed or otherwise amended by majority vote of the City Council.



**Office of the City Attorney
Memorandum**

Date: January 31, 2020
To: City Council; Morgan Smith, City Manager
From: Robbie Sepler, Deputy City Attorney
Re: Outstanding Council Discussion Point from November 26, 2019 Council Meeting

On November 26, 2019, the Council adopted Resolution No. 2019-26, updating the City's Code of Conduct and Ethics Program.

Prior to adopting Resolution No. 2019-26, the Council, on November 26, 2019, discussed, but did not vote, on five motions presented by then-Councilmember Ron Peltier. At that time, the Council indicated its intent to review the motions at a later date.

A copy of the five motions provided by then-Councilmember Peltier during the meeting is included as **Attachment A** to this memorandum (then-Councilmember Peltier's proposed changes are in **green**; the language indicated in **blue** was adopted via Resolution No. 2019-26).

In summary, the five motions collectively attempted to amend the Code of Conduct and Ethics Program to allow individuals to submit a complaint alleging that the actions of a member of the Ethics Board violated either:

- Article III, setting out the procedures through which complaints and requests are reviewed under the Code of Conduct and Ethics Program; or
- Article V, relating to the composition and duties of the Ethics Board.

As adopted on November 26, 2019, the Code of Conduct and Ethics Program allows individuals to only submit complaints alleging either a violation of Article I (Code of Conduct) or a violation of Article II (Code of Ethics). While it does not provide a process through which complaints alleging violations of Articles III or V may be filed or reviewed, Article V, Subsection (A)(5)(b), of the Code of Conduct and Ethics Program does authorize the removal of a member of the Ethics Board by the City Council for inappropriate conduct as follows:

The City Council may remove a member for inappropriate conduct before the expiration of the member's term. Before removing a member, the City Council shall specify the cause for removal and shall give the member the opportunity to make a personal explanation.

In most circumstances, failure by a member of the Ethics Board to follow the requirements of Article III or V would likely constitute "inappropriate conduct" that would be grounds for removal of that member from the Ethics Board.

In addition, if the review procedures of Article III were not followed, the City Council also has inherent authority under state law to take legislative action to ensure that the proper review procedure is followed for complaints or requests submitted under the Code of Conduct and Ethics Program.

Attachment A

Former Councilmember Peltier's
Proposed Motions Regarding Resolution No. 2019-26
From November 26, 2019 Council Meeting.

Proposed motions Regarding Resolution 2019-26 revising the City of Bainbridge Island's Ethics Program
By Council Member Peltier, 11/26/19

MOTION #1: I move to amend Article III. C.1. of the Ethics Program, per Resolution 2019-26, to read as follows (proposed language in green):

C. Review of Article II, III, and V Complaints

1. The City Clerk shall refer to the Ethics Board complaints alleging one or more violations of the Code of Ethics (Article II) by a Councilmember or a member of a City Committee or Commission, except for complaints concerning members of the Ethics Board, to the Ethics Board for review in accordance with Subsections (2)-(7) below. The City Clerk shall refer complaints alleging one or more violations of the Code of Ethics (Article II), **Enforcement of the Ethics Program (Article III), and/or Ethics Board (Article V)** by a member of the Ethics Board to the Hearing Examiner for review in accordance with Subsections (8)-(12) below.

MOTION #2: I move to amend Article III. C.10. of the Ethics Program, per Resolution 2019-26, to read as follows (proposed language in green):

10. After reviewing the complaint and the response, if one was submitted, the Hearing Examiner shall take one or more of the following actions and inform the complainant, the respondent, and the City Clerk accordingly:

- a. Refer the complaint back to the City Clerk if the complaint alleges violations of the Code of Conduct (Article I) rather than alleged violations of the Code of Ethics (Article II), **Enforcement of the Ethics Program (Article III), and/or Ethics Board (Article V)**;
- b. Determine that the complaint lacks reasonable credibility;
- c. Determine that the facts stated in the complaint, even if true, would not constitute a violation of the Code of Ethics (Article II), **Enforcement of the Ethics Program (Article III), and/or Ethics Board (Article V)**;
- d. Determine that the facts stated in the complaint, even if true, would not constitute a material violation of the Code of Ethics because any possible violation was inadvertent or minor or has been adequately cured, such that further proceedings on the complaint would not serve the purposes of the Code of Ethics (Article II);
- e. Hold the complaint for action at a future time if the matter is the subject of litigation; or
- f. Determine that, based on the submissions of the complainant and the respondent, further proceedings under Article IV are warranted.

MOTION #3: I move to amend Article IV.A.1. of the Ethics Program, per Resolution 2019-26, to read as follows (proposed language in green):

A. Hearing Examiner Review of Article II Complaints

1. The City Clerk shall provide written notification to the complainant and the

respondent of the time, date, and place of the hearing before the Hearing Examiner at which the complaint concerning alleged violations of the Code of Ethics (Article II), Enforcement of the Ethics Program (Article III), and/or Ethics Board (Article V) will be reviewed.

MOTION #4: I move to amend Article IV.A.4. of the Ethics Program, per Resolution 2019-26, to read as follows (proposed language in green):

A. Hearing Examiner Review of Article II Complaints

4. Within 20 business days after the conclusion of the hearing, the Hearing Examiner shall, based upon a standard of proof of clear and convincing evidence, make findings of fact and conclusions of law. If the Hearing Examiner determines that the alleged Code of Ethics), Enforcement of the Ethics Program (Article III), and/or Ethics Board (Article V) violation(s) have not been proven, the Hearing Examiner shall dismiss the complaint. If the Hearing Examiner determines that one or more Code of Ethics), Enforcement of the Ethics Program (Article III), and/or Ethics Board (Article V) violation(s) are proven, the Hearing Examiner shall forward the matter to the City Council for a determination regarding the appropriate level of sanctions to be imposed for the Code of Ethics (Article II), Enforcement of the Ethics Program (Article III), and/or Ethics Board (Article V) violations. In either event, a copy of the findings and conclusions shall be forwarded to the City Clerk, for distribution to the City Council, and, by registered mail, to the person who made the complaint and to the respondent at addresses as given by such persons to the Hearing Examiner.

MOTION #5: I move to amend Article IV.B.1. and 2. of the Ethics Program, per Resolution 2019-26, to read as follows (proposed language in green):

B. Action by City Council upon Hearing Examiner's Findings and Conclusion

1. Within 45 business days of receipt of the Hearing Examiner's findings and conclusions that sustain a Code of Ethics, Enforcement of the Ethics Program (Article III), and/or Ethics Board (Article V) violation, the City Council shall schedule an executive session to consider the findings and conclusions, hear from the respondent, and deliberate upon the appropriate level of civil sanction(s) to be imposed, if any, except to the extent that the respondent requests that they be heard in open public session.

2. The Council may take no formal action or, by majority vote of the Council (not including the respondent, if a Councilmember, who shall not participate in said vote) at an open public meeting, may impose any of the following sanctions in response to a sustained violation of the Code of Ethics, Enforcement of the Ethics Program (Article III), and Ethics Board (Article V):

a. Admonition: An admonition shall be a verbal non-public statement made by the Mayor, Deputy Mayor, or Mayor Pro Tem to the Councilmember or member of a City Committee or Commission who has violated the Code of Ethics, Enforcement of the Ethics Program (Article III), and/or Ethics Board (Article V).

b. Reprimand: A reprimand shall be a letter prepared by the City Council, signed

by the Mayor, Deputy Mayor, or Mayor Pro Tem, and directed to the Councilmember or member of a City Committee or Commission who has violated the Code of Ethics, Enforcement of the Ethics Program (Article III), and/or Ethics Board (Article V).

c. Censure: A censure shall be a written statement administered personally by the Mayor, Deputy Mayor, or Mayor Pro Tem to the Councilmember or member of a Committee or Commission who has violated the Code of Ethics, Enforcement of the Ethics Program (Article III), and/or Ethics Board (Article V) violation. The Councilmember or member of a City Committee or Commission shall appear at a time and place directed by the City Council to receive the censure. The censure shall be given publicly and the official who has violated the Code shall not make any statement in support or opposition thereto or in mitigation. A censure shall be deemed administered at the time it is scheduled whether or not the Councilmember or member of a City Committee or Commission appears as required.



CITY OF
BAINBRIDGE ISLAND

Special City Council Meeting Agenda Bill

MEETING DATE: April 30, 2019

ESTIMATED TIME:

AGENDA ITEM: City Council and Ethics Board Joint Special Meeting on Ethics,

STRATEGIC PRIORITY: Good Governance

PRIORITY BASED BUDGETING PROGRAM:

AGENDA CATEGORY: Discussion

PROPOSED BY: Executive

RECOMMENDED MOTION:

Discussion.

SUMMARY:

In this joint special meeting of the City Council and the Ethics Board, the Council and Board will participate in a workshop with two regional experts on ethics. The goal is to reach a better understanding of what other cities are doing to effectively address matters involving ethics, and to receive recommendations regarding potential improvements to the City's Ethics Program.

FISCAL IMPACT:

Amount:	
Ongoing Cost:	
One-Time Cost:	
Included in Current Budget?	

BACKGROUND:

On February 26, 2019, the City Council considered Resolution No. 2019-13, regarding establishing standards under which the Ethics Board and City Council will evaluate alleged violations of Article I of the City's Ethics Program. At that meeting, the Council decided to table the resolution pending more research, analysis, and consideration related to the Ethics Program. Subsequently, it was decided that a joint City Council-Ethics Board workshop would be beneficial for the Council and Board to receive presentations and information from regional experts on ethics related to how other cities address such matters, as well as related to recommendations for potential improvements to the City's Ethics Program.

The general agenda for the workshop is as follows:

1. The Mayor will open the workshop and provide introductory remarks.

2. The two presenters, Greg Rubstello (attorney from Ogden Murphy Wallace) and Steve Gross (Auburn City Attorney), will make presentations, as follows:
 - Greg and Steve will introduce themselves and explain their credentials and experience.
 - Greg will provide an overview regarding how other cities effectively address ethics issues.
 - Steve, who is the former City Attorney for Port Townsend, will present on Port Townsend's experience with their ethics program and why that program was changed to be more effective.
 - Greg will provide his opinions and perspective regarding the City of Bainbridge Island's Ethics Program and draft Resolution No. 2019-13 (relating to how the Council will address Article I complaints).

3. The City Council and Ethics Board will discuss questions and topics.
 - As Greg and Steve are presenting, participants (i.e., the City Council and Ethics Board) will write down questions they have or discussion topics they want to dig into more deeply.
 - Each participant will be asked to state the questions or discussion topics that they want the group to consider.
 - The questions and discussion topics will be written down.
 - The Council and Ethics Board, as a group, will prioritize the questions and discussion topics and decide what they want to discuss first and in what order.
 - The Council and Ethics Board will discuss the prioritized questions and topics, and will include Greg and Steve in the discussion as subject matter experts.

4. The Council and Ethics Board will discuss and determine next steps.
 - The Council and Board will discuss possible next steps, including the possibility of pursuing amendments to the City's Ethics Program.
 - The Council and Board may discuss possible next steps related to Council deliberations of the decisions that were issued recently.

Attachments:

1. Draft Resolution No. 2019-13 (included in 2/26/19 agenda packet)

2. Bainbridge Ethics Program - Resolution No. 2018-10 (included in 2/26/19 agenda packet)
3. Greg Rubstello PowerPoint presentation
4. Steve Gross PowerPoint presentation
5. Port Townsend Code of Ethics - Chapter 2.80 PTMC
6. HCR 4401 - Code of Conduct for the Washington State Legislature (included in 2/26/19 agenda packet)

Note: Regarding the attached PowerPoint presentations of the presenters, at least one of the presenters is planning to supplement his presentation for the workshop on April 30 as further work is done on the final presentation.

ATTACHMENTS:

[Resolution No. 2019-13 Revising Ethics Program Related to Article I](#)

[Resolution No. 2018-10 Updating Ethics Program Approved 032718](#)

[Greg Rubstello - Ethics Workshop Presentation \(April 30, 2019\)](#)

[Steve Gross - Ethics Workshop Presentation \(April 30, 2019\)](#)

[Port Townsend Code of Ethics - Chapter 2.80 PTMC](#)

[HCR 4401 Regarding Code of Conduct](#)

FISCAL DETAILS:

Fund Name(s):

Coding:

Ethics Program Review

Ethics Workshop

Bainbridge Island City Council and Ethics Board
April 30, 2019

Greg A. Rubstello



OGDEN
MURPHY
WALLACE
ATTORNEYS

Personal Introduction

Greg A. Rubstello

OMW



Greg A. Rubstello

- Member Attorney, Ogden Murphy Wallace, PLLC
- City Attorney since 1978, currently serves as City Attorney for Lake Stevens, Clyde Hill and Woodway
- Past President of WSAMA, and 2018 recipient of WSAMA's Ernest H. Campbell Award for achievement in Municipal Law
- Served as special counsel to Ethics Commissions in Lynnwood, Monroe and Woodinville
- Since 2000 counseled OMW municipal clients regarding ethical issues related to statutory and local codes and policies

Overview

How Washington Cities and Towns Address Ethical Issues

OMW



Framework for Local Ethics Codes

- Ch. 42.23 RCW “Code of Ethics for Municipal Officers-Contract Interests” prohibits:
 - A financial interest in a contract made by, through, or under the supervision of a public officer, or for the benefit of their office
 - Acceptance of any compensation or gratuity in connection with the contract
 - Using your position to secure special privileges or exemptions for the public officer or others
 - Receiving any kind of gift, compensation, reward, gratuity from a source other than the City for performance of official duties
 - Accepting outside employment where the disclosure of confidential information would reasonably be expected to be disclosed
 - Disclosure of confidential information gained by reason of their position

- So long as not inconsistent with these prohibitions or otherwise violative of statute or the constitution, local governments are free to impose more restrictive prohibitions

Ethics Codes for Cities and Towns

- 2015 Survey: 28 Cities from out of over 200 City Municipal Codes on the MRSC website had adopted by Ordinance a Local Ethics Code
- Of the 28, 26 were limited to “rule based” standards of conduct for local public officers, and employees
- 2 Codes – included “values” based standards of conduct in their standards of conduct and as potential subject matter for complaints and requests for advisory opinions
 - City of Kirkland
 - City of Bainbridge Island

Why So Few Local Ethics Codes?

- Another Layer of Local Government

- Other options:
 - State Code in RCW 42.23
 - Protocols adopted and enforced by the Council or Board/Commission
 - Employee Policies enforced by the Administration
 - Whistleblower Policies
 - The Ballot Box

- More trouble than they are worth
 - Politically motivated complaints
 - Conflict among officials
 - Staff support and the role of the City Attorney's Office
 - Additional expense

What do Local Ethics Code Commonly Do?

- Provide greater clarity to and/or expand the scope of the statutory prohibitions
 - Gifts and favors
 - Family members
 - Outside employment
 - Using influence
- Go beyond the subject matter of the statutory prohibitions
 - Legislative matters and disclosure of a public official's financial or private interests
- Provide a local complaint process more accessible to the public and within the local jurisdiction
 - A process for advisory opinions

COBI Ethics Program and Draft Resolution No. 2019-13

Some analysis, comments, thoughts and opinions

OMW



Note: This slide and this topic area will be supplemented with additional materials for the presentation.

- Analysis and comments will include among other matters:
 - Article I
 - Advisory opinions and complaints
 - What standards should apply?
 - Draft Resolution No. 2019-13
 - Who should be able to request an opinion or bring a complaint?
 - Remedies and sanctions?
 - Articles I and II
 - Due Process, Free Speech and other constitutional issues
 - Role of the City Attorney's Office and use of independent counsel
 - Problematic provisions and language
 - Suggestions

OMW

Greg A. Rubstello
grubstello@omwlaw.com
(206) 447-7206

OGDEN MURPHY WALLACE
OMWLAW.COM

ETHICS WORKSHOP –

APRIL 30, 2019

City of Bainbridge Island City Council and Ethics Board

Presenter:

Steve Gross

- Auburn City Attorney
- Former Port Townsend City Attorney

FOCUS – PORT TOWNSEND'S EXPERIENCE & KEY TAKEAWAYS

- Why did Port Townsend decide to change its Ethics Code?
- What was the process in making such changes?
- What was the result?

WHY DID PORT TOWNSEND SEE A NEED FOR A CHANGE?

A turning point was a fairly contentious complaint that involved charges against:

- Three of the seven Councilmembers;
- The City Manager; and
- Three or four department heads.

Based on this experience, staff recommended simplifying and clarifying the Ethics Code.

WHY DID PORT TOWNSEND SEE A NEED FOR A CHANGE?

Some of the provisions of the Ethics Code were unclear, including:

- A. Included a broad prohibition against participating in any “transaction of the city.”
- B. The process for hearings contained impractical deadlines.
- C. Included a provision for the City Attorney to review a potential complaint and provide a legal opinion.

WHAT DID PORT TOWNSEND DO?

The City Council considered and discussed the following:

1. What behavior do we want to regulate?
 - A. Council behavior to each other and the public?
 - B. Employee behavior to each other and the public?
 - C. Financial conflict of interest?
 - D. Gifts?

WHAT DID PORT TOWNSEND DO?

The City Council also considered and discussed:

2. What do we want to do with the results of ethics investigations, and who do we want to conduct such investigations?
 - Council/City Manager vs. employee

WHAT DID PORT TOWNSEND DO?

The City Council also considered and discussed:

3. Where is the best place for the regulation to be?
 - A. Council Rules?
 - B. Personnel Policies?
 - C. Ethics Code?
 - D. Purchasing Code/Policy Rules?
 - E. Appearance of Fairness?

QUESTIONS?

8

Chapter 2.80
CODE OF ETHICS¹

Sections:

2.80.010 Policy.

2.80.020 Adoption of state law.

2.80.030 Statute of limitations.

2.80.040 Hearing officer.

2.80.050 Processing of complaints.

2.80.060 Penalties.

2.80.010 Policy.

A. The city of Port Townsend is committed to conducting its business in a fair, open, efficient, and accountable manner. Municipal officers shall conduct their public and private actions and financial dealings in a manner that shall present no conflict of interest between the public trust and their private interest. Each municipal officer is assumed and expected to act in accordance with all laws that may apply to his or her position.

B. Each municipal officer shall be trained on the requirements of this code as soon as practicable after beginning appointment to or employment with the city. Refresher training shall be provided at least every two years.

C. This code does not address issues of sexual harassment, discrimination, workplace rules or personnel policies, or other activities prohibited by law or regulated by city policies. (Ord. 3177 § 1 (Exh. A), 2017).

2.80.020 Adoption of state law.

A. General. Except as provided for in this chapter, the city adopts as its code of ethics Chapter 42.23 of the Revised Code of Washington ("RCW"). This chapter shall apply to all municipal officers as defined in RCW 42.23.020.

B. Gifts.

1. Except as amended in this chapter, the city adopts the following RCW sections: 42.52.010(8), (9), and (20), 42.52.140, and 42.52.150, except RCW 42.52.150(2) (g), (h), (i), and (l).

2. Where the statutes listed in subsection (B)(1) of this section use the terms “state,” “state officer,” or “state employee,” those terms shall apply to the city or to municipal officers of the city as appropriate.

3. Where the statutes listed in subsection (B)(1) of this section refer to other sections in Chapter 42.52 RCW, those references shall be to the comparable section in Chapter 42.23 RCW. If there is no comparable section in Chapter 42.23 RCW, the statutes adopted in subsection (B)(1) of this section shall not apply. (Ord. 3177 § 1 (Exh. A), 2017).

2.80.030 Statute of limitations.

Any complaint related to a violation of this chapter must be filed with the city clerk not later than three years from the alleged date of the violation. (Ord. 3177 § 1 (Exh. A), 2017).

2.80.040 Hearing officer.

A. Ethics Hearing Officer Position Created. There is created and established the position of “ethics hearing officer” (“hearing officer”) for the city of Port Townsend. The council shall appoint a hearing officer and may appoint one or more alternate hearing officers. The first alternate hearing officer shall serve as the hearing officer if the hearing officer is unavailable or unable to serve, and the second alternate shall serve if the hearing officer and first alternate are unavailable or unable to serve.

B. Qualification. A hearing officer must be an active member of the Washington State Bar Association, have at least seven years of experience as a lawyer, have no record of public discipline, and have experience as an adjudicator or as an advocate in contested adjudicative hearings.

C. Powers. The hearing officer, when assigned by council or the city manager, has the authority to conduct independent investigations and to conduct hearings related to violations of this chapter. (Ord. 3177 § 1 (Exh. A), 2017).

2.80.050 Processing of complaints.

A. Written Complaint. Any person may submit a written complaint to the city clerk that a municipal officer has violated this chapter. The allegation must set forth specific facts with precision and detail. In addition, the complaint must set forth the specific sections and subsections of this code that the facts violate and the reasons why. Each complaint must state the submitter’s legal name and a method by which the submitter may be contacted. The city clerk shall promptly deliver a copy of the complaint to the individual complained against.

B. Elected Officials – City Manager. Complaints against elected officials and the city manager shall be automatically assigned to a hearing officer. The hearing officer shall dismiss a complaint if, assuming all facts alleged are true, there is no violation of this

chapter or that any violation was minor. The hearing officer will submit a report to the city council, with a copy to the complainant and the person against whom the complaint was filed.

C. Employees – Advisory Board Members. Complaints regarding city employees and officials, and members of advisory bodies, shall be brought to the employee’s supervisor, manager, or to the city manager. The supervisor, or appropriate individual as determined by the city manager, shall investigate the complaint and provide a report to the city manager.

D. Hearings shall generally be conducted in accordance with the city’s then-current adopted version of the hearing examiner’s rules of procedure. (Ord. 3177 § 1 (Exh. A), 2017).

2.80.060 Penalties.

A. Elected officials may be disciplined as provided for in state law or the council’s rules of procedure.

B. The city manager may be disciplined as provided for in state law, the city’s personnel policy manual, or the manager’s employment contract.

C. Employees may be disciplined as provided for in state law, the city’s personnel policy manual, or the applicable collective bargaining agreement.

D. Members of advisory boards may be disciplined as provided for in state law or the council’s rules of procedure. (Ord. 3177 § 1 (Exh. A), 2017).

¹Prior legislation: Ords. 2786, 2801 and 2830.

CERTIFICATION OF ENROLLMENT
HOUSE CONCURRENT RESOLUTION 4401

66th Legislature
2019 Regular Session

Adopted by the House January 24, 2019

Speaker of the House of Representatives

Adopted by the Senate January 30, 2019

President of the Senate

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE CONCURRENT RESOLUTION 4401** as passed by House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

HOUSE CONCURRENT RESOLUTION 4401

Passed Legislature - 2019 Regular Session

State of Washington 66th Legislature 2019 Regular Session

By Representatives Macri, Mosbrucker, Peterson, Doglio, Ryu, Orwall, Pellicciotti, Fey, Sells, Goodman, Shewmake, Wylie, Fitzgibbon, Kilduff, Senn, Appleton, Chapman, Rude, Lovick, Ortiz-Self, Paul, Springer, Slatter, Callan, Walen, Gregerson, Dolan, Irwin, Ramos, Thai, Pettigrew, Valdez, Bergquist, MacEwen, Robinson, Smith, Steele, Stokesbary, Van Werven, Gildon, Barkis, Griffey, Dufault, Stanford, Ormsby, Kirby, Maycumber, Tharinger, Cody, Eslick, Hudgins, Sutherland, Jinkins, Lekanoff, Pollet, Stonier, Frame, Davis, Leavitt, Dent, Dye, Graham, Reeves, Sullivan, and Riccelli

Read first time 01/24/19.

1 WHEREAS, All members of the Washington State legislative
2 community have the right to work in a legislative environment that is
3 safe and respectful and free from unsolicited, unwelcome, and
4 inappropriate comments or conduct; and

5 WHEREAS, Both the House of Representatives and Senate have
6 undertaken efforts to review and revise their respectful workplace
7 policies and established work groups in each chamber to make
8 appropriate recommendations; and

9 WHEREAS, Both work groups recommended adoption of a Code of
10 Conduct;

11 NOW, THEREFORE, BE IT RESOLVED, By the House of Representatives
12 of the state of Washington, the Senate concurring, That the following
13 be adopted as the Code of Conduct of the Washington State
14 Legislature:

15 The Legislature is committed to maintaining a professional and
16 respectful environment for all members of the legislative community.
17 As stewards of the public trust, each member of the legislative
18 community is expected to:

19 (1) Conduct themselves with self-awareness, self-respect, and
20 professionalism;

21 (2) Treat all others with respect, dignity, and civility,
22 regardless of status or position; and

1 (3) Refrain from engaging in hostile, intimidating, offensive, or
2 unlawful activities or behaviors that may amount to discrimination,
3 harassment, sexual harassment, or bullying.

4 This Code of Conduct applies equally and at all times to all
5 members of the legislative community, both on and off the capitol
6 campus; and

7 BE IT FURTHER RESOLVED, That the Chief Clerk of the House of
8 Representatives and the Secretary of the Senate distribute this Code
9 of Conduct to all members and employees of the legislative branch and
10 to all persons registered as lobbyists pursuant to state law, and
11 conspicuously post this Code of Conduct in all legislative
12 facilities.

--- END ---

RESOLUTION NO. 2019-13

A RESOLUTION of the City Council of Bainbridge Island, Washington, approving an amendment to the City's Ethics Program in accordance with Chapter 2.07 BIMC.

WHEREAS, Chapter 2.07 BIMC provides that the City Council shall establish by resolution or ordinance an Ethics Program for the City of Bainbridge Island; and

WHEREAS, on May 10, 2006, the City Council passed Resolution No. 2006-25, adopting an Ethics Program for the City of Bainbridge Island; and

WHEREAS, on March 23, 2011, the City Council passed Resolution No. 2011-07, adopting a revised Ethics Program for the City of Bainbridge Island; and

WHEREAS, on May 18, 2011, the City Council passed Resolution No. 2011-13, amending the City's Ethics Program; and

WHEREAS, on August 22, 2012, the City Council passed Resolution No. 2012-11, amending the City's Ethics Program; and

WHEREAS, on March 27, 2018, the City Council passed Resolution No. 2018-10, amending the City's Ethics Program; and

WHEREAS, on February 5, 2019, the City Council passed a motion which clarified the Ethics Program to clearly state in Article I of the Program that the Ethics Board has the authority to consider all requests and complaints referred to the Board and submitted by any person related to alleged violations of Article I involving City Councilmembers or members of City Committees or Commissions, and to consider such requests and complaints as requests for Advisory Opinions for which the Board will issue such an Opinion, and that to the extent that any other provision in the Program is unclear regarding such authority, or conflicts with such authority, this statement of authority governs; and

WHEREAS, on February 5, 2019, the City Council also passed a motion to direct the City Attorney to recommend to the Council clear standards related to evaluation of requests for Advisory Opinions brought under Article I of the Ethics Program; and

WHEREAS, the City Council finds that it is in the best interest of the City of Bainbridge Island to further amend the City's Ethics Program accordingly.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BAINBRIDGE ISLAND DOES RESOLVE AS FOLLOWS:

Section 1. Pursuant to BIMC 2.07.010 and the motions passed by the City Council on February 5, 2019, as above described in the "Whereas" clauses, the City of Bainbridge Island Ethics Program is hereby amended to further memorialize that the Program has been amended by

those motions, to incorporate the intent of those motions into the Program, and to further amend the Program by adding a new Section E of Article I as follows:

E. Article I – Scope of Authority, Standards, and Remedies

1. Ethics Board Authority Related to Alleged Article I Violations.

a. Any person may submit to the City Clerk a written request or complaint related to an alleged violation of Article I.

b. With respect to Article I, the Ethics Board’s authority is limited to consideration of requests and complaints forwarded to it by the City Clerk that relate to alleged violations of Article I involving City Councilmembers or members of City Committees or Commissions.

c. The Ethics Board shall consider such requests and complaints as requests for Advisory Opinions for which the Board will issue such an Opinion.

d. To the extent that any other provision in the Ethics Program is unclear regarding such authority, or conflicts with such authority, this statement of authority governs.

2. Standards to Evaluate Alleged Article I Violations.

Regarding the Core Values and Ethics Principles that are described in Section B and Section C of Article I and otherwise in the Ethics Program, the City Council has determined that it is imperative to provide clear standards by which the Ethics Board and the Council shall evaluate alleged violations of Article I. The Council regards the Ethics Program as a resource to support ethical behavior (e.g., via education and training) and a means to achieve accountability for ethical conduct, but the Council is also mindful that the Program should not be used as a tool to pursue political objectives.

In evaluating alleged Article I violations related to the expectations described directly below, the Council and the Ethics Board shall determine whether a violation has occurred based on answering “yes” to the following question:

Would an unbiased, disinterested, and reasonable person find that the communication or conduct at issue violates Article I by clearly failing to meet one or more of the expectations described below?

The Article I expectations are as follows:

City Councilmembers and members of City Committees or Commissions are expected to:

a. Treat all others with honesty, integrity, dignity, and civility, including by not impugning the motives of others, not intentionally misrepresenting the communications of others, not claiming a lack of intelligence on the part of others, and not defaming or degrading others or the Council, Committee, or Commission on which the member serves.

b. Act with fairness and impartiality in the application, consideration, modification, or adoption of policies and directives.

c. Act with equality and mutual respect with regard to interpersonal conduct.

d. Act in a manner that demonstrates responsibility for the stewardship of public resources by ensuring that public monies, property, and other resources are used and conserved in a responsible manner that takes into consideration both the present and future needs of the community.

e. Act in a manner that demonstrates accountability for the results of efforts by the Council, Committee, or Commission on which the member serves.

f. Promote the public good and preserve the public's trust by being transparent and honest in all public statements and written communications.

g. Conduct themselves with self-awareness, self-respect, and professionalism.

h. Refrain from engaging in hostile, intimidating, offensive, or unlawful activities or behaviors that may amount to discrimination, harassment, sexual harassment, or bullying.

3. Article I Violations and Remedies.

a. In issuing Advisory Opinions, as referenced, for example, in Article III, Section E., of the Ethics Program, the Ethics Board shall transmit the Board's Opinion to the requestor of the Opinion and publish the Opinion on the City's website. The Board shall also transmit the Opinion to the subject of the request (i.e., City Councilmember or member of City Committee or Commission) and to the City Council.

b. Upon such a transmittal of an Advisory Opinion by the Ethics Board to the City Council, the Council, at a meeting open to the public, may vote to review the Opinion.

c. If the Council votes to review the Board's Opinion, and if the Council concurs with the Opinion, the Council has the discretion to determine if a sanction is appropriate and, if so, what that sanction will be. Such a sanction, for example, could range from a general statement of disapproval to a formal censure.

d. Alternatively, if the Council votes to review the Board's Opinion, and if the Council does not concur with the Opinion of the Board, the Council has the discretion to conclude that the Council's opinion is that no violation of Article I has occurred. If the Council so concludes, the Council shall clearly state the basis upon which it has reached a different conclusion than that reached by the Board.

Section 2. Except as modified herein, all other provisions of the Ethics Program shall remain in full force and effect. However, if any of those other provisions conflict with the modifications made via this Resolution, the provisions of this Resolution shall govern.

PASSED by the City Council this _____ day of February, 2019.

APPROVED by the Mayor this _____ day of February, 2019.

By: _____
Kol Medina, Mayor

ATTEST/AUTHENTICATE:

By: _____
Christine Brown, City Clerk

FILED WITH THE CITY CLERK: February 22, 2019
PASSED BY THE CITY COUNCIL: _____, 2019
RESOLUTION NO. 2019-13

