



CITY OF  
BAINBRIDGE ISLAND

**CITY COUNCIL STUDY SESSION  
TUESDAY, SEPTEMBER 04, 2018**

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 To evaluate the qualifications of an applicant for employment or to review the performance of a public employee pursuant to RCW 42.30.110(1)(g), 60 Minutes
3. **APPROVAL OF AGENDA/ CONFLICT OF INTEREST DISCLOSURE - 7:00 PM**
4. **MAYOR'S REPORT - 7:05 PM**
5. **PRESENTATIONS**
  - 5.A (7:10 PM) Proclamation Declaring September 11, 2018, as a "Day of Service and Remembrance" - Mayor Medina, 5 Minutes  
[Proclamation re September 11 - Day of Service & Remembrance](#)
6. **UNFINISHED BUSINESS**
  - 6.A (7:15 PM) Update on Moratorium - Planning, 30 Minutes  
[20180904 Moratorium work program status report](#)  
[ORD NO. 2018-23](#)  
[20180831 Development Moratorium Summary](#)
  - 6.B (7:45 PM) Planning Commission Recommendations Relating to Land Use Review and Approval Roles, Responsibilities, and Procedures - Planning, 20 Minutes  
[Staff Memo re PC Recommendations re Land Use Review & Approvals](#)  
[Haney Memo re Roles of Land Use Approval Bodies](#)  
[Summary of Land Use Review & Approval Procedures](#)  
[Haney Powerpoint.pptx](#)

Presentation to Council re Process of Hearing Deciding Land Use Applications  
LAND USE ROLES FOR CITY OFFICIALS

**7. NEW BUSINESS**

- 7.A (8:05 PM) Lodging Tax Advisory Committee Appointment - Mayor Medina, 5 Minutes  
[Dinsmore \(redacted\) - LTAC.pdf](#)  
[James \(redacted\) - LTAC.pdf](#)

**8. CITY COUNCIL DISCUSSION**

- 8.A (8:10 PM) Funding Mechanism for City's Public Art Program and Funding Request from Arts and Humanities Bainbridge (AHB) - Executive, 30 Minutes  
[Memo on Public Art Program - CC 28 Aug 2018.pdf](#)  
[PAC Proposal Slides 8.7.18.pdf](#)  
[PAC Background Narrative 8.6.18.pdf](#)  
[Appendix - PAC Proposal 8.7.18.pdf](#)
- 8.B (8:40 PM) Ordinance No. 2018-19 Planning Commission Recommendations Related to Modifying Chapter 16.18 BIMC, Land Clearing, and BIMC 18.15.010 with Consideration for "Landmark Tree" Regulations - Planning, 60 Minutes  
[CC Staff Memo](#)  
[Ordinance No. 2018-19 Tree Regulations.docx](#)  
[Exhibit A 2018-19 Ch 16.18](#)  
[Ordinance No. 2018-25 Imposing an Interim Official Control related to Landmark Trees](#)  
[Ordinance No. 2018-32 Modifying Chapter 16.32 Relating to Landmark Trees-Emergency](#)

**9. FUTURE COUNCIL AGENDAS**

- 9.A (9:40 PM) Future Council Agendas, 5 Minutes  
[Special City Council Meeting 091118.pdf](#)  
[City Council Regular Business Meeting 091118.pdf](#)  
[City Council Study Session 091818.pdf](#)  
[City Council Regular Business Meeting 092518.pdf](#)

**10. FOR THE GOOD OF THE ORDER - 9:50 PM**

**11. ADJOURNMENT - 10:00 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](mailto:cityclerk@bainbridgewa.gov) by noon on the day preceding the meeting.**



CITY OF  
BAINBRIDGE ISLAND

## City Council Study Session Agenda Bill

**MEETING DATE:** September 4, 2018

**ESTIMATED TIME:** 60 Minutes

**AGENDA ITEM:** To evaluate the qualifications of an applicant for employment or to review the performance of a public employee pursuant to RCW 42.30.110(1)(g),

**STRATEGIC PRIORITY:** Good Governance

**PRIORITY BASED BUDGETING PROGRAM:**

**AGENDA CATEGORY:** Discussion

**PROPOSED BY:** City Council

**RECOMMENDED MOTION:**

Executive session discussion only.

**SUMMARY:**

Council will hold an executive session 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.

**FISCAL IMPACT:**

<b>Amount:</b>	
<b>Ongoing Cost:</b>	
<b>One-Time Cost:</b>	
<b>Included in Current Budget?</b>	

**BACKGROUND:**

**ATTACHMENTS:**

**FISCAL DETAILS:**

**Fund Name(s):**

**Coding:**



CITY OF  
BAINBRIDGE ISLAND

## City Council Study Session Agenda Bill

**MEETING DATE:** September 4, 2018

**ESTIMATED TIME:** 5 Minutes

**AGENDA ITEM:** (7:10 PM) Proclamation Declaring September 11, 2018, as a "Day of Service and Remembrance" - Mayor Medina,

**STRATEGIC PRIORITY:** Safe City

**PRIORITY BASED BUDGETING PROGRAM:**

**AGENDA CATEGORY:** Proclamation

**PROPOSED BY:** City Council

**RECOMMENDED MOTION:**

I move to authorize the Mayor to sign the proclamation declaring September 11, 2018, as a "Day of Service and Remembrance" and to add this proclamation to the list of annual proclamations that the Mayor is authorized to sign without further action.

**SUMMARY:**

The attached proclamation declares September 11, 2018, as a "Day of Service and Remembrance" in the City of Bainbridge Island.

**FISCAL IMPACT:**

<b>Amount:</b>	
<b>Ongoing Cost:</b>	
<b>One-Time Cost:</b>	
<b>Included in Current Budget?</b>	

**BACKGROUND:**

**ATTACHMENTS:**

[Proclamation re September 11 - Day of Service & Remembrance](#)

**FISCAL DETAILS:**

**Fund Name(s):**

**Coding:**



## **PROCLAMATION**

**WHEREAS**, on September 11, 2001, the American people endured with courage and heroism the worst terrorist attack on U.S. soil in the nation's history; and

**WHEREAS**, in response to this tragedy, Americans across the country came together in a remarkable spirit of patriotism and unity and carried out countless acts of kindness, generosity, and compassion; and

**WHEREAS**, community organizations and family members of 9/11 victims began observing the anniversary of September 11th as a charitable service day to honor the memory of those who were lost and those who united in response to the tragedy, including first responders and volunteers; and

**WHEREAS**, the Edward M. Kennedy Serve America Act, approved by Congress and enacted into law on April 21, 2009, directed September 11th to be observed and recognized as an annual "National Day of Service and Remembrance" and charged the Corporation for National and Community Service with leading this nationwide effort; and

**WHEREAS**, participating in service and remembrance activities on September 11th is a positive and respectful way to remember the lives of those lost, pay tribute to those who rose in service, and honor those who continue to serve our country today, including veterans, soldiers, military families, and first responders; and

**WHEREAS**, on September 11, 2018, and on the days leading up to and following this day, citizens of Bainbridge Island have an opportunity to participate in activities that honor 9/11 victims and heroes by joining together in service projects to meet community needs; and

**WHEREAS**, the Bainbridge Island American Legion Colin Hyde Post 172 will observe this day with a ceremony beginning at 7:00 p.m. on September 11, 2018, at the Legion Hall on Bucklin Hill Road, to which the public is invited;

**NOW, THEREFORE**, I, Kol Medina, Mayor of the City of Bainbridge Island, on behalf of the City Council, do hereby proclaim September 11, 2018, as

### **A DAY OF SERVICE AND REMEMBRANCE**

in the City of Bainbridge Island and call upon the people of Bainbridge Island to honor the lives and memories of those lost through participation in community service and remembrance ceremonies on this day and throughout the year.

DATED this 4th day of September, 2018

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Kol Medina, Mayor



CITY OF  
BAINBRIDGE ISLAND

## City Council Study Session Agenda Bill

**MEETING DATE:** September 4, 2018

**ESTIMATED TIME:** 30 Minutes

**AGENDA ITEM:** (7:15 PM) Update on Moratorium - Planning,

**STRATEGIC PRIORITY:** Green, Well-Planned Community

**PRIORITY BASED BUDGETING PROGRAM:**

**AGENDA CATEGORY:** Report

**PROPOSED BY:** Planning & Community Development

**RECOMMENDED MOTION:**

Discussion on extending the development moratorium, its duration, and what development actions would be included if the moratorium is extended.

**SUMMARY:**

City staff have been working to address the issues identified in the development moratorium (Ordinance No. 2018-02, amended by Ordinances Nos. 2018-03, 2018-05, 2018-09 and 2018-14); and, extended for 90-days, by Ordinance No. 2018-23. See attached Work Program Status Summary, Ordinance No 2018-23, and a development moratorium summary.

The development moratorium expires on October 9, 2018.

**FISCAL IMPACT:**

<b>Amount:</b>	
<b>Ongoing Cost:</b>	
<b>One-Time Cost:</b>	
<b>Included in Current Budget?</b>	

**BACKGROUND:**

**ATTACHMENTS:**

[20180904 Moratorium work program status report](#)

[ORD NO. 2018-23](#)

[20180831 Development Moratorium Summary](#)

**FISCAL DETAILS:**

**Fund Name(s):**

**Coding:**

Moratorium Topic	Status	Timeline
Critical Areas Ordinance (CAO)	<p>The development moratorium was amended by the City Council on April 24, 2018 to continue to apply within the City's shoreline jurisdiction areas (Ordinance 2018-14). amended This effectively applies the aquifer recharge protection area (ARPA) requirement in the shoreline; however, no other provisions of the CAO update apply within the shoreline. On June 26, 2018, the City Council adopted Ordinance 2018-23 thereby amending Ordinance 2018-14 to extend the development moratorium for 90-days.</p> <p>The City has a Shoreline Master Program (SMP) Amendment in process to integrate the updated critical areas regulations into the SMP.</p>	<p>A public hearing on the SMP amendment is scheduled for the September 11 City Council meeting. The next steps are to respond to public comments, make any changes based on public comment and Council input, then transmit the proposed amendment to the Department of Ecology for initial review. Ecology then sends back the draft amendment with recommended changes and the City Council locally adopts the amendment. It is then sent back to Ecology for final approval. The amendment process is expected to be completed in late winter/early spring 2019.</p>
Anticipated status on October 9:	<p>Complete: CAO update effective outside shoreline jurisdiction.                      Incomplete: CAO update effective within shoreline jurisdiction.</p>	

Moratorium Topic	Status	Timeline
Subdivisions	<p>The Planning Commission is reviewing three topics related to subdivisions:</p> <ul style="list-style-type: none"> <li>• Creation of design guidelines</li> <li>• Revisions to subdivision standards</li> <li>• Revisions to review process, decision criteria and decision-making authority</li> </ul> <p>The Planning Commission completed their review of new subdivision design guidelines.</p> <p>The Planning Commission forwarded recommendations to Council related to the review process and decision-making authority to the City Council. Additional recommendations to the City Council are forthcoming.</p>	<p>The Planning Commission continues its consideration of subdivision standards and review process (August 30 and September 13 meetings).</p> <p>A public hearing related to review process and decision-making authority is scheduled for the September 25 City Council meeting.</p>
Anticipated status on October 9:	<p>Complete: New subdivision design guidelines; decision-making authority determined.                      Incomplete: Revised standards, review process, and decision criteria</p>	

Moratorium Topic	Status	Timeline
Design Guidelines Update (related to Site Plan and Design Review and Conditional Use Permits).	A RFQ for professional services was published and closed on August 17, 2018. Staff is reviewing the three proposals received and will select and contract with a consultant in September.	The update to the City's Design Guidelines is expected to be completed by July 1, 2019.
Anticipated status on October 9:	Complete: Consultant under contract and project launch. Incomplete: Update to design guidelines.	

Moratorium Topic	Status	Timeline
<p>Review Process for Land Use Permits (related to Subdivisions, Site Plan and Design Review and Conditional Use Permits).</p>	<p>The Planning Commission and Design Review Board have been discussing this topic at their meetings in May through September, 2018.</p> <p>The Planning Commission provided recommendations to City Council related to roles and responsibilities for the Planning Commission, Design Review Board, and City Council and the legislative review process for amending the BIMC. The Planning Commission and Design Review Board will continue to discuss the review process and decision criteria at future meetings.</p>	<p>A public hearing related to review process and decision-making authority is scheduled for the September 25 City Council meeting.</p>
<p>Anticipated status on October 9:</p>	<p>Complete: New roles and responsibilities for the Planning Commission, Design Review Board, and City Council, revisions to legislative review process for amending the BIMC.                      Incomplete: Revisions to the review process and decision criteria.</p>	

Moratorium Topic	Status	Timeline
Affordable Housing	<p>The Affordable Housing Task Force completed review of their draft final report to the City Council at their meeting on July 11, 2018.</p> <p>On June 12, 2018, the City Council approved a contract with ECONorthwest 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.</p>	<p>The Affordable Housing Task Force Report with recommendations was presented to the City Council on July 24, 2018, and was discussed further at the August 21, 2018 City Council Study Session.</p> <p>The economic market analysis and program feasibility study is expected to be completed in November, 2018.</p>
Anticipated status on October 9:	<p>Complete: Council discussion and endorsement of Priority and Quick Wins recommendations from the AHTF Report.</p> <p>Incomplete: Implementation/approval of AHTF recommendations including adoption of inclusionary zoning regulations.</p>	

## **ORDINANCE NO. 2018-23**

**AN ORDINANCE** of the City of Bainbridge Island, Washington, adopted pursuant to RCW 35A.63.220 and RCW 36.70A.390; amending Ordinance No. 2018-14, leaving the effective date of the moratorium unchanged; and extending the moratorium for an additional 90 days.

**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 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, at this time, that amendment process is not expected to be complete before July 9, 2018, which is the date that the moratorium is currently set to expire; and

**WHEREAS**, the City Council approved Ordinance 2014-14 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 City Council authorized staff to proceed with a work plan addressing the priorities identified at the joint meeting; and

**WHEREAS**, on May 7 and 21 and on June 4, 2018, the City's Design Review Board discussed alternatives for revisions to the City's subdivision standards, dimensional standards, and land use review procedures, and a subset of the City's Planning Commission attended those meetings; and

**WHEREAS**, on May 10 and 24, June 7, June 14, and June 21, 2018, the City's Planning Commission discussed alternatives for revisions to the City's subdivision standards, dimensional standards, and land use review procedures; and

**WHEREAS**, on June 21, 2018, the City’s Planning Commission completed its review of revisions to the City’s land use review procedures related to the Planning Commission’s roles and responsibilities and forwarded recommendations on these issues to the City Council; and

**WHEREAS**, the City’s Planning Commission expects to complete its review of revisions to the City’s subdivision standards, dimensional standards, and land use review procedures and forward recommendations on these issues to the City Council at an upcoming meeting or meetings; and

**WHEREAS**, City staff is working with the Design Review Board on a scope of services to solicit professional services to update the City’s Design Guidelines (BIMC 18.18.030), which is work that is not expected to be completed until the end of 2018, 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 standards, dimensional standards, and land use review procedures; 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

**WHEREAS**, the Affordable Housing Task Force has been meeting monthly and recently met to review its draft final report for the City Council and expects to have a final report issued in mid-July, 2018; 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 February 27, 2018, the City Council was provided with a moratorium work program; and

**WHEREAS**, on April 10, May 22, June 5, and June 19, and June 26, 2018, the City Council was provided moratorium work program status report updates; and

**WHEREAS**, the City Council held a public hearing on June 26, 2018, related to extending the development moratorium; 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, and 2018-14.

**Section 2. Moratorium Amended.** The moratorium is hereby amended, as also stated in Section 5 below, to extend the moratorium for ninety (90) days beyond the current six month duration of the moratorium, which, without this amendment, would expire on July 9, 2018.

**Section 3. 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 is hereby extending 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.

**Section 4. 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 5. No Change to Basis for Declaration of Emergency and Effective Date; Extension to Duration.** 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 five moratorium ordinances which preceded this ordinance, Ordinance Nos. 2018-02, 2018-03, 2018-05, 2018-09, and 2018-14, 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, Ordinance No. 2018-09, and Ordinance No. 2018-14, as well as in this ordinance, and those “Whereas” clauses are adopted as findings of fact. This ordinance amending the moratorium shall extend the current six month moratorium for an additional ninety (90) days beyond that initial six month period, which moratorium has an effective date of January 9, 2018, unless terminated earlier by the City Council. 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 26<sup>th</sup> day of June, 2018.

APPROVED by the Mayor this 26<sup>th</sup> day of June, 2018.



Kol Medina, Mayor

ATTEST/AUTHENTICATE:



Kelly E. Johnson, DEPUTY CITY CLERK FOR  
Christine Brown, City Clerk **CHRISTINE BROWN**

FILED WITH THE CITY CLERK  
PASSED BY THE CITY COUNCIL  
PUBLISHED:  
EFFECTIVE DATE:  
ORDINANCE NO:

June 15, 2018  
June 26, 2018  
June 29, 2018  
July 5, 2018  
2018-23

July 5, 2018

**DEVELOPMENT MORATORIUM SUMMARY:** Effective for six months beginning January 9, 2018 (Ordinance No. 2018-02, amended by Ordinance Nos. 2018-03, 2018-05, 2018-09, 2018-14, & 2018-23)

Development Activity PROHIBITED During the Moratorium:

- A. All applications for new short subdivisions (BIMC 2.16.070), new preliminary long subdivisions (BIMC 2.16.125), and new large lot subdivisions (BIMC 2.16.080).
- B. Structures, buildings, and land use permits and approvals in the R-1, R-2, and R-0.4 zones within the City's shoreline jurisdiction areas (see Chapter 16.12 BIMC):
  - (i) That will result in less than 65% of the subject property being retained as native vegetation; or
  - (ii) That will result in reducing the native vegetation on the subject property by any amount if that property had native vegetation existing on less than 65% of the property as of the effective date of the moratorium.
  - (iii) Provided, that this Section B does not apply to complete land use applications (see BIMC Table 2.16.010-1) that were submitted prior to the effective date of the moratorium, and to the resultant site work and associated approvals related to such complete land use applications.
- C. 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.

EXCEPTIONS to the Above Development Activities Prohibited During the Moratorium:

- A. Permits and approvals for affordable housing projects that qualify as Housing Design Demonstration Project (HDDP) Tier 3 projects pursuant to BIMC 2.16.020.Q. and Table 2.16.020.Q-1, and
- B. Permits and approvals for government facilities and structures; educational facilities and preschools; wireless communication facilities; and emergency medical and disaster relief facilities.



CITY OF  
BAINBRIDGE ISLAND

## City Council Study Session Agenda Bill

**MEETING DATE:** September 4, 2018

**ESTIMATED TIME:** 20 Minutes

**AGENDA ITEM:** (7:45 PM) Planning Commission Recommendations Relating to Land Use Review and Approval Roles, Responsibilities, and Procedures - Planning,

**STRATEGIC PRIORITY:** Green, Well-Planned Community

**PRIORITY BASED BUDGETING PROGRAM:**

**AGENDA CATEGORY:** Discussion

**PROPOSED BY:** Planning & Community Development

**RECOMMENDED MOTION:**

Discussion and direction to staff about which options to pursue in preparation for the September 25, 2018, Council meeting.

**SUMMARY:**

The Planning Commission has made several recommendations to the City Council related to land use review procedures and approval authority. The Council has discussed these recommendations, including at its meeting on July 24, 2018, and at its workshop on August 27, 2018.

Per the Council's current schedule, the Council would be conducting a public hearing on land use review procedures and approval authority at its meeting on September 25, 2018. The preparation for that meeting by staff includes preparing a draft ordinance for the public hearing and preparing agenda materials that will, in part, analyze the potential costs of the options being proposed.

This agenda item is for the Council to discuss this topic further and to determine which specific Planning Commission recommendations and/or other options the Council would like staff to research and analyze related to preparing a draft ordinance on this topic, and related to providing the Council with cost information applicable to options for which the Council is interested in pursuing.

**FISCAL IMPACT:**

<b>Amount:</b>	
<b>Ongoing Cost:</b>	
<b>One-Time Cost:</b>	
<b>Included in Current Budget?</b>	

**BACKGROUND:** Attached with this agenda item are:

- The staff memo describing the Planning Commission's proposal that was provided initially to the Council at its July 24, 2018, meeting.
- The June 1, 2018, memorandum that attorney Jim Haney prepared at the request of the City Attorney for the Council, Planning Commission, and Design Review Board (“DRB”) related to legal principles and considerations regarding this topic. This memorandum was provided to the Council in previous agenda packets, including in the packet for the August 27, 2018, workshop.
- A summary table of the land use review and approval procedures at issue. The table was also provided to the Council in previous agenda packets, including in the packet for the August 27, 2018, workshop.
- The PowerPoint presentations that were provided to the Council by the speakers as part of the Council's August 27, 2018, workshop.

Regarding additional background, the following information was also provided in the agenda packet for the Council's July 24, 2018, meeting:

Land Use Policy 6.8 of the City's Comprehensive Plan states:

Review and specify the authority and the role of the Design Review Board, Hearing Examiner, Planning Commission and City Council in the land use development review and decision-making process. Land use actions can be ministerial, quasi-judicial and legislative in nature. As part of this review, consider a role for the Planning Commission and/or Design Review Board in reviewing preliminary long subdivisions.

This policy is included in the City's current moratorium on acceptance of certain development applications, including site plan and design reviews, conditional use permits, and all subdivisions. As such, review of land use review procedures and approval authority is included in the City's moratorium work plan.

Roles and responsibilities for review and approval of land use applications are codified in BIMC 2.14, Land Use Approval Bodies, and BIMC 2.16, Land Use Review Procedures. The Planning Commission's recommendations include revised review procedures and approval authority intended to improve consistency of land use actions with the City's Comprehensive Plan. In addition, during the course of its discussions, the Planning Commission made a recommendation to suspend the current Housing Design and Demonstration Projects program, which is also contained in BIMC 2.16.

BIMC 2.14 and 2.16 are available through the City's website:

<http://www.codepublishing.com/WA/Bainbridgelsland/#!/Bainbridgelsland02/Bainbridgelsland02.html>

**ATTACHMENTS:**

[Staff Memo re PC Recommendations re Land Use Review & Approvals](#)

[Haney Memo re Roles of Land Use Approval Bodies](#)

[Summary of Land Use Review & Approval Procedures](#)

[Haney Powerpoint.pptx](#)

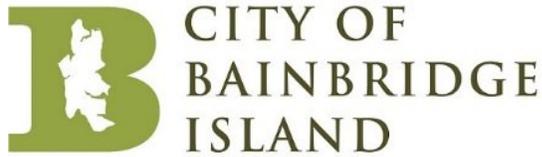
[Presentation to Council re Process of Hearing Deciding Land Use Applications](#)

[LAND USE ROLES FOR CITY OFFICIALS](#)

**FISCAL DETAILS:**

**Fund Name(s):**

**Coding:**



Department of Planning and Community Development

## Memorandum

Date: July 24, 2018  
To: City Council  
From: Christy Carr, AICP  
Senior Planner  
Subject: Planning Commission Action Related to Moratorium Work Plan  
Recommendations Related to Land Use Review Procedures and Approval Authority

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### I. PURPOSE OF AGENDA ITEM

The Planning Commission has made several recommendations to the City Council related to land use review procedures and approval authority.

The purpose of the agenda item is for the City Council to:

- Discuss Planning Commission recommendations and provide input to staff.
- Provide direction to staff to prepare a draft ordinance related to revisions to BIMC 2.14 and 2.16 based on Council review of Planning Commission recommendations.
- Schedule a public hearing on such a proposed ordinance.

### II. BACKGROUND

Land Use Policy 6.8 of the City's Comprehensive Plan states:

Review and specify the authority and the role of the Design Review Board, Hearing Examiner, Planning Commission and City Council in the land use development review and decision-making process. Land use actions can be ministerial, quasi-judicial and legislative in nature. As part of this review, consider a role for the Planning Commission and/or Design Review Board in reviewing preliminary long subdivisions.

This policy is included in the City's current moratorium on acceptance of certain development applications, including site plan and design reviews, conditional use permits, and all subdivisions; therefore, review of land use review procedures and approval authority is included in the City's moratorium work plan.

Roles and responsibilities for review and approval of land use applications are codified in BIMC 2.14, Land Use Approval Bodies, and BIMC 2.16, Land Use Review Procedures. The Planning Commission's recommendations include revised review procedures and approval authority intended to improve

consistency of land use actions with the City's Comprehensive Plan. In addition, during the course of its discussions, the Planning Commission made a recommendation to suspend the current Housing Design and Demonstration Projects program, also contained in BIMC 2.16.

BIMC 2.14 and 2.16 are available through the City's website:

<http://www.codepublishing.com/WA/BainbridgeIsland/#!/BainbridgeIsland02/BainbridgeIsland02.html>

### III. Summary of Planning Commission Recommendations

A narrative summary of proposed revisions to BIMC 2.14 and 2.16 is provided below. In some cases, specific language recommended by the Planning Commission is provided in strikethrough/underline text. Where specific language is not provided, the recommendation is provided in concept and strikethrough/underline text will be provided in a draft ordinance.

#### A. Revisions to BIMC 2.14: Land Use Approval Bodies.

This chapter of the municipal code describes the purpose and role, duties and responsibilities, and function and composition (e.g., quorum and voting, membership) of the City's land use approval bodies. The Planning Commission recommends the following revisions:

1. Roles and responsibilities of each land use approval body are described in Chapter 2.14. The Planning Commission recommends revisions to roles and responsibilities as shown in the attached table, "Land Use Review Procedures – Draft Proposed Revisions." The language in Chapter 2.14 will be revised to reflect the revisions.
2. Revisions to BIMC 2.14.020, Planning Commission:
  - a. BIMC 2.14.020.B.2, Roles and responsibilities (added) -- Consider the location, character, extent, and effect of any proposed dedication of any street or other area for public use, including parks, public ways, public buildings or public structures, with reference to the comprehensive plan, pursuant to RCW 35A.63.080.
  - b. BIMC 2.14.020.B.4 (added) -- Review and make recommendations on all large lot subdivisions, long subdivisions (preliminary and final), major site plan and design reviews, major conditional use permits, and major shoreline conditional use permits, taking into consideration the recommendation from the Design Review Board and a comprehensive review of the project at a public meeting.
  - c. BIMC 2.14.020.B.6 (revised) -- Create the planning commission agenda prior to its publication, ~~per~~ in consultation with the director's ~~recommendation~~; and
  - d. BIMC 2.14.020.B. 7 (deleted) -- ~~Report annually to the city council prior to the start of the budget process.~~
  - e. Several, non-substantive revisions to improve organization and clarity.

#### B. Revisions to BIMC 2.16.010. Land use procedures summary table and related changes throughout BIMC 2.16.

The Planning Commission made a recommendation to revise Table 2.16.010-1 as shown in the attached table, "Land Use Review Procedures – Draft Proposed Revisions." Related changes throughout BIMC 2.16 will be made to reflect/support the changes to the table.

- C. Revisions to BIMC 2.16.180.D: Land Use Review Procedures, Legislative review of regulations and area-wide rezones, Planning Commission review and recommendation.

This section provides that Planning Commission review and recommendation is required only for amendments to the BIMC related to Title 18, Zoning. The Planning Commission recommends that the language be revised to reflect the full breadth of development regulations the Planning Commission generally reviews, including Chapters 2.14 and 2.16, Title 16 (Environment), and Title 17 (Subdivisions and Boundary Line Adjustments).

Staff also identified potential improvements that could be made regarding department practice and specific code language in the applicability section related to which body (Planning Commission, City Council, or both) is required to hold a public hearing to amend the municipal code related to land use review. The code language could also be clarified regarding when a public hearing is required for any change to the municipal code. Specific sections to be revised include (the following is existing text from BIMC):

1. BIMC 2.16.180.B -- Applicability. This section applies to adoption of or amendments to the BIMC, including area-wide rezones initiated by the city and area-wide rezones accompanying privately initiated amendments to the comprehensive plan.
2. BIMC 2.16.180.D. Planning Commission Review and Recommendation.
  1. Planning Commission review and recommendation is only required for amendments to BIMC Title 18, area-wide rezones initiated by the city, or area-wide rezones associated with a privately initiated amendment to the comprehensive plan.
  2. The planning commission shall hold a public hearing for all amendments to the official zoning map and zoning code of the city prior to issuing a recommendation to the city council.
3. BIMC 2.16.180.F. City Council Review.
  1. The city council shall hold a public hearing on the proposed amendment at the second reading of the proposed regulation. Any person may participate in the public hearing. The city council has discretion to limit testimony to relevant, nonrepetitive comments and to set time limits.

#### Suspension of BIMC 2.16.020.Q: Housing Design and Demonstration Projects (HDDP)

The Planning Commission has recently reviewed several HDDP projects and expressed a general dissatisfaction with the program due to the review process, subjectivity of the scoring system, and perspective that the projects are not resulting in sufficient community benefit (e.g., affordable housing, water conservation measures). The HDDP program was also discussed by the Planning Commission within the context of their review of subdivision standards as part of the moratorium work plan. Current drafts of proposed subdivision design guidelines and standards include some of the HHDP program's requirements to receive incentives (e.g., diversity of housing types, use of native vegetation).

The Planning Commission recommends suspending the HDDP program until its review of revised subdivision standards is completed. Once their work is complete, it is anticipated the Planning Commission will make a recommendation to the City Council related to the future of the HDDP program. Note: The current HDDP program is set to expire on December 31, 2019, per Ordinance 2016-27.

## MEMORANDUM

TO: Mayor Medina and Bainbridge Island City Council  
Douglas Schulze, City Manager  
Joe Levan, City Attorney  
Gary Christensen, Director of Planning and Community Development  
City of Bainbridge Island Planning Commission  
City of Bainbridge Island Design Review Board  
City of Bainbridge Island Hearing Examiner

FROM: James E. Haney

DATE: June 1, 2018

RE: Roles of City Council, Planning Commission, Design Review Board, and Hearing Examiner in Land Use Permits

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### I. INTRODUCTION

I have been asked by the City Attorney to provide you with a memorandum outlining the ways in which the roles of the City Council, Planning Commission, Design Review Board, and Hearing Examiner could be altered in order to increase (and possibly decrease) those roles in the review of land use project permits. This memorandum incorporates significant input from the City Attorney.

As a preliminary matter, it is important to remember that Chapter 36.70B RCW (the Regulatory Reform Act) places some specific constraints on the land use permitting process, including a requirement that there be ***no more than one public hearing on any land use permit and no more than one closed record appeal***. The City has flexibility in determining which of its land use approval bodies holds any required public hearing and which, if any, of its land use approval bodies holds the closed record appeal, but the law constrains the City to have only one of each and that plays a significant role in how the various land use approval bodies must interact.

It's also important to consider as a threshold matter the sheer complexity of land use law and the requirement that every land use permitting decision for which a hearing is required must be supported by written findings and conclusions. Professional hearing examiners, for example, are more used to preparing such findings and conclusions than city councils and citizen advisory bodies and this can serve a city well for the sake of clarity and in situations in which a decision is challenged. City councils and advisory bodies can certainly learn to draft or enter quality

findings, but that task often falls to city planning staff and/or to the city attorney when there is no hearing examiner involved. As a general rule, hearing examiners are much more familiar with the rules that govern those who are acting in a quasi-judicial (i.e., administrative court-like) capacity than is the case for members of city councils and advisory bodies, and that familiarity can be significant in having a system that is legally fair and impartial, both in reality and as a matter of perception.

With such preliminary considerations in mind, the remainder of this memorandum lays out the role envisioned for each of the land use approval bodies in state law, the role laid out for these bodies in the Bainbridge Island Municipal Code (BIMC), and the ways in which those roles might be restructured to provide more or less involvement from each of the land use approval bodies.

## **II. BAINBRIDGE ISLAND CITY COUNCIL**

### **State Law Role:**

While the role of a city council in legislative matters such as the adoption and amendment of comprehensive plans and development regulations is clearly defined under state law, its role in land use permit approvals is more flexible and is generally governed by whatever land use permitting ordinances the city adopts. With respect to the adoption and amendment of comprehensive plans and development regulations, state law requires that the “planning agency” of the city (the planning commission) hold at least one public hearing on the adoption or amendments. The city council must then adopt or amend the comprehensive plan or development regulations and may, but is not obligated to, hold additional public hearings of its own prior to taking final action. Because the adoption or amendment is legislative and must be accomplished by ordinance, a city council cannot delegate this power and must be the final step in the process.

With respect to land use permits, however, this power is generally administrative, and the council may delegate it or keep it as it sees fit, unless state law specifically requires council involvement. Site specific rezones is the one activity where council involvement is required, because site specific rezones must be approved by ordinance and the council is the only body that has the authority to adopt ordinances.

### **BIMC Role:**

Under the BIMC as it currently exists, the City Council has retained a role in three land use project permit decisions: (a) the approval of final long subdivisions; (b) the approval of site-specific rezones; and (c) the approval of permits considered under consolidated permit review whenever the council is the approval authority on any one of the consolidated permit applications.

### **Possible Changes to Increase Council Involvement:**

If the City Council desires to increase its involvement in land use permit matters, there are multiple ways in which the City Council could do so. First, the hearing examiner system the City currently has is optional under state law. In other words, while the City has the authority to create a hearing examiner and to delegate authority to that examiner to hear and decide certain types of applications, like conditional use permits, preliminary plats, shoreline permits, etc., and to hear and decide appeals from SEPA and permitting decisions made by staff, the Council does not have to delegate that authority and could abolish the hearing examiner system and retain authority over any or all of the decisions that are currently delegated.

Pros of such an approach include:

- The Council would have decision-making authority in some or all of the matters now decided by the Hearing Examiner.

Cons of such an approach include:

- The workload currently shouldered by the Hearing Examiner would be transferred to the Council.
- The Council would also have new constraints on its ability to communicate with its constituents on land use permitting matters since the appearance of fairness statutes, which are intended to prohibit communications outside of the hearing process, would apply.

Second, state law provides that the City Council may, by ordinance, specify that a hearing examiner's decision has either (a) the effect of a recommendation to the Council, or (b) on every type of land use permit other than a site-specific rezone, the effect of a final decision. If the Council wants to retain the hearing examiner system but to gain more authority over the land use permits considered by the Hearing Examiner, the Council could change the effect of the Hearing Examiner's decisions from the current final decision to a recommendation. Again, one must keep in mind that land use permitting processes are limited to one open record hearing and one closed record appeal, so if the Hearing Examiner conducted the public hearing on a land use permit application before making a recommendation, the Council's review would be limited to the record created by the Examiner and the Council could not take additional evidence.

Pros of this approach include:

- The Council would have the final decision-making authority in some or all of the matters now decided by the Hearing Examiner, but without taking on all of the Hearing Examiner's workload.

Cons of this approach include:

- The additional workload that would get shifted from the Hearing Examiner to the Council;
- Appearance of fairness constraints;
- The limitation on taking additional evidence;
- Since no additional evidence can be taken, it may be difficult to support a decision that differs from the Hearing Examiner’s recommendation.

Third, if the Council wants to retain the hearing examiner system and continue to have the Hearing Examiner make final decisions, the Council could insert itself as an appellate body above the Hearing Examiner and prior to court review. Under the Land Use Petition Act, Chapter 36.70C RCW, all final land use decisions of a city are appealable to superior court within 21 days after the decision is issued.

Currently, the City has provided in the BIMC for decisions by the Hearing Examiner to be appealable directly to the superior court. If the Council wanted to increase its involvement, it could amend the BIMC to make Hearing Examiner decisions appealable to the Council and only final Council decisions appealable to the courts. The Hearing Examiner would hold the hearing and make a decision and because of the “one open record hearing, one closed record appeal” limitation, the Council could not take new evidence but would decide the appeal based on the Hearing Examiner’s record and appeal criteria that would have to be set forth in the City’s regulations.

Pros of this approach include:

- The Council would have final authority on some or all of the matters currently determined by the Hearing Examiner, but because the authority would be limited to appeals, not all of the Hearing Examiner’s workload would shift to the Council.

Cons of this approach include:

- Appearance of fairness limitations;
- The limitation on new evidence;
- The limitation on the ability to overturn the Hearing Examiner’s decision without finding that the Hearing Examiner erred in some way.

### **Possible Changes to Decrease Council Involvement:**

The above discussion indicates how the City Council could increase its involvement in land use permits, but it is possible to decrease the Council’s role as well. Of the three roles the City Council has retained, two are mandated by state law. As noted above regarding the first role, state law requires that site-specific rezones be approved by ordinance (because they amend the zoning map, which is adopted by ordinance). Regarding the second role, the Regulatory Reform

Act mentioned above also requires the City to have a consolidated permit process whereby a developer seeking multiple permits that would ordinarily go to more than one land use approval body can have those permits consolidated for review by one body only, with that body being the highest city authority that would review any of the permits. In Bainbridge Island, that authority is the Council, and if the permits applied for are included a site-specific rezone, all consolidated permits could be elevated to the Council level.

However, regarding the third role over which the City Council has retained authority, final long subdivision approvals, such a role is not required for the Council by state law. In 2017, the state legislature amended the state subdivision law to allow city councils to delegate this authority to another land use approval authority, e.g., the hearing examiner, the planning director, or the planning commission. State law does not require the council to delegate the authority, so the Bainbridge Island City Council could remain the approval body for final long subdivisions, but it no longer has to. If the Council wants to decrease its involvement in land use permitting, this is a way it could do so.

Pros of such an approach include:

- As described below, some cities have, for example, delegated final long subdivision approval authority to the Hearing Examiner on the theory that the Examiner is in the best position to determine whether the conditions the Examiner imposed on the preliminary plat have been met.
- Other cities have delegated (or are considering delegating) final long subdivision approval authority to staff based on the theory that the decision is ministerial, and that staff is capable of making such a determination.
- Such a delegation would decrease the Council's workload to some extent, and allow the Council to remove itself from a quasi-judicial role in which it currently engages and which can be a difficult role for Councilmembers due to appearance of fairness considerations.

Cons of such an approach include:

- The Council would be delegating a decision its making currently to some other body or person (e.g., hearing examiner, planning director, planning commission) and would thereby reduce its decision-making authority.
- The workload of the Hearing Examiner, Director of Planning and Community Development, and/or Planning Commission would increase to some extent.

### **III. PLANNING COMMISSION**

#### **State Law Role:**

As noted above, planning commissions have a clear role under state law in the legislative processes used in adopting and amending comprehensive plans and development regulations. As the "planning agency" of a city, the planning commission must hold at least one public hearing

on any proposed comprehensive plan or development regulation adoption or amendment and must make a recommendation on the same to the city's legislative body, i.e., the city council.

With respect to land use permitting actions, however, cities have the choice to decide what role to provide their planning commissions. The hearing examiner system is optional under state law and it is possible for a city to empower their planning commission to perform all of the functions that a hearing examiner can perform, e.g., hearing and deciding/making recommendations on project permits such as conditional use permits, preliminary plats, and shoreline permits, and hearing appeals from city staff decisions. The role of the planning commission is whatever the city decides it to be, within certain constraints, as described in more detail below.

### **BIMC Role:**

Under the BIMC, the Bainbridge Island Planning Commission's role in land use permitting is limited to making recommendations on major site plan and design reviews and housing demonstration projects, and, when requested by the Director of Planning and Community Development or the Hearing Examiner, on other permits such as shoreline substantial development permits, major conditional use permits, and major variances. In order to avoid violating the "one open record hearing and one closed record appeal" requirement, the Planning Commission makes these recommendations after conducting a public meeting, not a public hearing.

### **Possible Changes to Increase Planning Commission Involvement:**

If the City Council wishes to increase the Planning Commission's role in the permitting process, it has a couple of options. Because the hearing examiner system is an alternative to using the Planning Commission to conduct permit hearings, it would be possible to amend the BIMC to transfer all or any part of the Hearing Examiner's functions to the Planning Commission. The Planning Commission could replace the Hearing Examiner as the primary hearing authority on particular permit applications or on all permit applications.

Pros of such an approach include:

- To give the Planning Commission more input or control over those applications the Council decides to give the Planning Commission jurisdiction over.

Cons of such an approach include:

- Shifting some or all of the Hearing Examiner's workload to the Planning Commission and thereby detracting from the Commission's ability to complete its other work.
- Imposing the appearance of fairness limitations discussed above on the Planning Commission, and making it harder for the Commission to separate its legislative policy-making role from an adjudicatory permitting role.

- Most jurisdictions have gone to the hearing examiner system in order to avoid these negatives and the few jurisdictions that have continued to use a planning commission for such decisions are small enough that the commission's workload is not seen as an issue.

The other option to increase the Planning Commission's role is to work within the current construct and increase the Planning Commission's authority to make recommendations. As noted above, the Planning Commission is required to make recommendations on major site plan and design review projects and on housing demonstration projects, but the Commission makes a recommendation on other permits only if requested to do so. A way to increase the Planning Commission's role would be to expand the number of permit types on which the Planning Commission may weigh in or to make the receipt of a Planning Commission recommendation mandatory.

Pros of such an approach include:

- To give the Planning Commission a more formal and mandatory role in land use permitting.

Cons of such an approach include:

- The same cons as would be the case if the Planning Commission was substituted for the Hearing Examiner (although the workload shift would be less).
- Possible impacts on the timely processing of permits.
- Under the Regulatory Reform Act mentioned above, review of most permits is required to be completed within 120 days after a complete application is filed. Adding a mandatory Planning Commission recommendation into some permits could make this timeline difficult or impossible to meet and would, at the very least, lengthen the time by which such decisions are made.

### **Possible Changes to Decrease Planning Commission Involvement:**

If the Council desires to decrease the Planning Commission's involvement in land use permitting, it could eliminate the Planning Commission's mandatory recommendation on major site plan and design review projects and housing demonstration projects, or on the ability of the Hearing Examiner or the Director of Planning and Community Development to request Planning Commission review in other matters. This would be done by amending the BIMC to change those roles. Because state law does not mandate Planning Commission involvement in any particular development application, the Council would be free to take any action to alter the Planning Commission's role that it sees fit.

Pros of such an approach include:

- The Planning Commission would have a decreased workload, which would require less of a commitment from its members.

- The Commission would have more time to focus on legislative matters, rather than matters involving specific projects.
- Less need for staff support in assisting the Planning Commission with its work.

Cons of such an approach include:

- Less of an opportunity to receive Planning Commission and public input on certain projects.
- Could increase the Council’s workload in considering matters for which the Council currently receives input from the Planning Commission.

#### **IV. DESIGN REVIEW BOARD**

##### **State Law Role:**

There are no state law provisions governing the matters that can be assigned to design review boards. The creation, composition, and duties of such boards are entirely within the discretion of the jurisdiction creating them.

##### **BIMC Role:**

Under the BIMC, the City’s Design Review Board (DRB) serves in an advisory capacity to the Director of Planning and Community Development, the Hearing Examiner, and the Planning Commission on site plan and design reviews, conditional use permits, and housing design demonstration project applications. Applications related to single-family residences such as family day care homes, minor/major home occupations, and single-family residential height variations are exempt from DRB consideration. In addition, applications related to utility facilities and to outdoor recreation facilities are exempt from DRB consideration. In order to avoid violation of the “one open record hearing and one closed record appeal” requirement, the DRB makes its recommendations after conducting a public meeting, not a public hearing.

##### **Possible Changes to Increase DRB Involvement:**

Because the DRB has no mandatory role in land use permitting under state law, the City Council is free to increase or decrease the DRB’s role from that currently prescribed by the BIMC. There are two ways in which the DRB’s role could be increased. First, the City could expand the number and type of permit types which the DRB reviews, i.e., remove the exceptions from DRB review that are set forth in the BIMC or extend the DRBs involvement beyond site plan and design review, conditional use permits, and review of housing design demonstration project applications. Second, the City Council could make the design standards used by the DRB even more robust than they are now. While either of these options is available, the ability to make them effective may be limited by the need to balance the roles of the land use approval bodies involved in the process and the desires of the community for more (or less) design regulation.

Pros of such an approach include:

- To give the DRB a more formal and mandatory role in land use permitting.
- To allow for enhanced adherence to design guidelines and standards.

Cons of such an approach include:

- Possible impacts on the timely processing of permits.
- As mentioned above, under the Regulatory Reform Act review of most permits is required to be completed within 120 days after a complete application is filed. Adding a mandatory DRB recommendation into some permits could make this timeline difficult or impossible to meet and would, at the very least, lengthen the time by which such decisions are made.

### **Possible Changes to Decrease DRB Involvement:**

As far as decreasing the DRB's role, the City could do so in at least three ways: (a) decrease the number and type of permits for which design review is required; (b) make the City's design review standards less robust; or (c) assign design review to another body, e.g., the Planning Commission or Hearing Examiner. The City Council is free to expand or contract the DRB's authority as the Council believes is appropriate.

Pros of such an approach include:

- The DRB would have a decreased workload, which would require less of a commitment from its members.
- The DRB could focus more on legislative matters, rather than matters involving specific projects.
- Less need for staff support in assisting the DRB with its work.

Cons of such an approach include:

- Less of an opportunity to receive DRB and public input on certain projects.
- Could decrease adherence to design guidelines and standards.
- Could increase the Council's workload in considering matters for which the Council currently receives input from the DRB.

## **V. HEARING EXAMINER**

### **State Law Role:**

As mentioned a few times above, the hearing examiner system is optional under state law. Cities adopting the hearing examiner system have the option to decide which permit applications and

decisions will be assigned to the examiner. These may include, but are not limited to, applications for preliminary and final plat approval, conditional use permits, variances, and shoreline permits, appeals from administrative permit decisions, and appeals from SEPA threshold determinations and EIS adequacy decisions. Cities also have the option of: (a) giving the hearing examiner's decision the effect of a recommendation to the city council; or (b) giving the hearing examiner's decision the effect of a final decision subject to appeal to the city council within a specified time limit; or (c) except in the case of a site-specific rezone, giving the hearing examiner's decision the effect of a final decision appealable to the superior court (which is the current system for the City of Bainbridge Island).

### **BIMC Role:**

Under the BIMC, the Hearing Examiner has been given the broadest authority that it is possible for the City to give a hearing examiner under state law, with one exception. The BIMC currently provides that the decision to approve or disapprove a final long subdivision lies solely with the City Council. While this was a requirement of state law prior to 2017, the state legislature amended the state subdivision law last year to allow a city council to delegate this function.

### **Possible Changes to Increase Hearing Examiner Involvement:**

The only way to increase the Hearing Examiner's involvement in land use permitting in the City of Bainbridge Island would be to delegate the City Council's authority over the approval or disapproval of final long subdivisions to the Examiner.

Pros of such an approach include:

- Some cities have done this on the theory that the Hearing Examiner is in the best position to determine whether the conditions the Examiner imposed on the preliminary plat have been met.
- Other cities have delegated (or are considering delegating) final long subdivision approval authority to staff based on the theory that the decision is ministerial, and that staff is capable of making such a determination.
- Such a delegation from the Council to the Hearing Examiner would decrease the Council's workload to some extent, and allow the Council to remove itself from a quasi-judicial role in which it currently engages and which can be a difficult role for Councilmembers due to appearance of fairness considerations.

Cons of such an approach include:

- The City Council would lose some decision-making authority by delegating a decision its making currently to the Hearing Examiner.
- Such a delegation would increase the Hearing Examiner's workload to some extent.

## **Possible Changes to Decrease Hearing Examiner Involvement:**

With respect to decreasing the Hearing Examiner's role in land use permitting, the options set forth above for increasing the Council's role, the Planning Commission's role, and the DRB's role virtually all involve a commensurate reduction in the role of the Hearing Examiner. Again, because the hearing examiner system is entirely optional and because there are various options for how to structure the authority of the hearing examiner within an adopted system, the Council has flexibility to determine what role best fits the City's needs.

Pros for this approach include:

- Would allow for an increase in the role of the Council, the Planning Commission, and/or the DRB in the land use permitting process.
- The City wouldn't have to pay to support the Office of the City's Hearing Examiner.

Cons for this approach include:

- A strong argument in favor of retaining the hearing examiner system and giving the Hearing Examiner a preeminent position in the City's land use permitting process is the complexity of land use law and the requirement that every land use permitting decision for which a hearing is required must be supported by written findings and conclusions.
- Professional hearing examiners are more used to crafting such findings and conclusions than city councils and citizen advisory bodies and this can serve a city well in terms of clarity and when a decision is challenged.
- Citizen advisory bodies can certainly learn to draft or enter quality findings, but that task often falls to the city planning staff and/or to the city attorney when there is no hearing examiner involved.
- If the City decides to decrease the role of the Hearing Examiner in land use permitting, it should consider how this function will be performed.

## **VI. CONCLUSION**

The City of Bainbridge Island has many options for how it structures its land use permitting system. Currently, the City has given the Hearing Examiner the broadest possible powers that state law allows, with the exception of power over final long subdivision approvals. Washington law is very flexible, however, and provides few restraints on the way in which cities can structure the permitting process. The City Council can increase or decrease the role of any of its land use approval bodies in the process until it finds the right balance to meet the desires of those bodies and the community at large.



# Land Use Review Procedures Draft Proposed Revisions

July 24, 2018

KEY    None: No role    R: Review and Recommendation    D: Decision    A: Appeal

RED text denotes a change

Type	Planning Commission		Director		City Council		Hearing Examiner	
	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed
Subdivisions								
Large lot (preliminary)	None	R	D	None	None	D	A	None
Large lot (final)	None	None	D	D	None	None	A	A
Long (preliminary)*	None	R	R	None	None	D	D	None
Long (final)	None	None	R	D	None	None	None	A
Short (preliminary)**	None	Optional R	D	D	None	None	A	A
Short (final)	None	None	D	D	None	None	A	A
Site Plan and Design Review (SPR)								
Major	R	R	D	None	None	D	A	None
Minor***	Optional R	Optional R	D	D	None	None	A	A
Conditional Use Permits								
Major*	Optional R	R	R	None	None	D	D	None
Minor	Optional R	Optional R	D	D	None	None	A	A
Major Shoreline Conditional Use Permits*	None	R	R	None	None	D	D	A

\*Quasi-judicial decision with public hearing

\*\* Short subdivisions limited to 4 or fewer lots (currently up to 9 lots when open space incentive used)

\*\*\*Planning Commission will provide recommendation for revised definition of minor SPR



July 24, 2018

SUMMARY OF KEY RECOMMENDED CHANGES (RED TEXT IN TABLE)

Large Lot Subdivisions

- Planning Commission review and recommendation (change from no review)
- Preliminary approval by City Council (change from administrative decision by Director)

Long Subdivisions (5 or more lots)

- Planning Commission review and recommendation (change from no review)
- Preliminary approval by City Council (change from HEX)
- Final approval by Director (change from City Council)

Short Subdivisions (2-4 lots)

- Planning Commission optional review and recommendation (change from no review)

Site Plan and Design Review (SPR)

- Decision by City Council (change from Director)

Major Conditional Use Permits (CUP)

- Planning Commission review and recommendation required (change from optional)
- Decision by City Council (change from HEX)

Major Shoreline Conditional Use Permits (SCUP)

- Planning Commission review and recommendation required (change from no review)
- Decision by City Council (change from HEX)

# THE LAND USE PERMITTING PROCESS – ROLES AND RESPONSIBILITIES

Presentation to the Bainbridge Island City Council

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ATTORNEYS

# KEY TAKEAWAYS

- The Bainbridge Island City Council has great flexibility in how it structures its permitting processes.
- State law imposes minimal constraints on how the City assigns roles and responsibilities in its land use permitting processes.
  - Chapter 36.70B RCW requires that there be no more than one open record hearing and no more than one closed record appeal on any land use permit.
  - Site specific rezones must be approved by the City Council by ordinance, but Council may delegate or not delegate approval authority on all other land use permits as the Council sees fit.
- Key considerations for City Council in determining what to delegate:
  - Complexity of land use law.
  - Quasi-judicial and appearance of fairness concerns.
  - Workload of Council, Planning Commission, DRB, and Hearing Examiner.
  - Time constraints.
  - Availability of staff resources.

# CITY COUNCIL'S CURRENT ROLE IN LAND USE PERMITTING

- Outside of the requirement for the Council to approve site-specific rezones, state law provides that the Council may delegate or not delegate its authority over land use permitting as Council sees fit.
- Under BIMC 2.14.010 and BIMC 18.24.090, the Council has retained final approval authority in four specific project permit decisions:
  - Final long subdivisions.
  - Site-specific rezones.
  - Demolition permits and permits for changes/alterations to historic structures (subject to appeal to Hearing Examiner).
  - Consolidated project permit review where any element requires City Council approval.

# PLANNING COMMISSION'S CURRENT ROLE IN LAND USE PERMITTING

- Under BIMC 2.14.020, BIMC 2.16.040, and BIMC Table 2.16.010-1, the Planning Commission's mandatory role in land use permitting is limited to reviewing and making recommendations on major site plan and design review applications, and HDDP applications, including HDDP applications involving land subdivision.
- The Planning Commission may also make recommendations on project permits when requested by the Director of Planning and Community Development or by the Hearing Examiner. These permits include major and minor conditional use permits, major and minor variances, shoreline substantial development permits, major and minor shoreline variances, minor site plan and design review applications, reasonable use exceptions, and site specific rezones.
- Planning Commission review occurs in a public meeting, not a public hearing.

# DESIGN REVIEW BOARD'S ROLE IN LAND USE PERMITTING

- Under BIMC 2.14.040, BIMC 2.16.040, and BIMC Table 2.16.010-1, the Design Review Board advises the land use permit decision makers. DRB review is required for major site plan and design review applications. Review is optional on minor site plan and design review applications, and on major and minor conditional use permits.
- Review is limited to determining whether the project complies with adopted design guidelines.
- Review occurs in a public meeting, not a public hearing.
- Certain applications are specifically exempt from DRB review, including, but not limited to, applications related to single family residences, including family day care homes, home occupations (both major and minor), height variances, and applications related to utilities and outdoor recreation facilities.

# HEARING EXAMINER'S ROLE IN LAND USE PERMITTING

- Much of the City's land use permitting decision-making is delegated to the Bainbridge Island Hearing Examiner. Under state law, RCW 35A.63.170, the Hearing Examiner system is optional, and the Hearing Examiner can be assigned any number of things, including:
  - Reviewing and making recommendations on site-specific rezones, a function which may otherwise assigned to the Planning Commission under state law; and
  - Reviewing applications for conditional uses, variances, subdivisions, shoreline permits, and any other class of application pertaining to land use; and
  - Reviewing appeals from administrative decisions or determinations on land use permits; and
  - Reviewing appeals from administrative decisions or determinations under SEPA.

# HEARING EXAMINER'S ROLE IN LAND USE PERMITTING, con't.

- The effect of the Hearing Examiner's decisions must be specified by ordinance, and
  - The decision can be given the effect of a recommendation to the city council; or
  - The decision can be given the effect of a final decision appealable to the city council; or
  - Except in the case of a rezone, the decision can be given the effect of a final decision appealable only to the superior court under the Land Use Petition Act (LUPA), Chapter 36.70C RCW or, in the case of shoreline permits only, to the State Shoreline Hearings Board under the Shoreline Management Act, Chapter 90.58 RCW.
- Under BIMC 2.14.030 and BIMC 2.16, the Bainbridge Island Hearing Examiner has been given the broadest possible authority allowed by state law, with the exception that the Hearing Examiner, Planning Commission or staff member could be delegated authority to approve final plats under a 2017 law. Currently final plats are approved by the City Council.

# KEY CONSIDERATIONS IN STRUCTURING ROLES

- The complexity of land use law and the potential for liability.
  - Statutes – RCW 82.02.020; RCW 64.40
  - Constitutional issues – Due Process (substantive and procedural), Takings
- Quasi-judicial decision-making, the appearance of fairness, and the requirement for findings and conclusions.
  - Quasi-judicial actions are those in which the rights of a permit applicant and others are decided after a hearing or appeal.
  - Appearance of fairness requires that proceedings not only be fair in fact, but also appear to be fair. Would a reasonable, disinterested person, knowing all of the facts and circumstances, conclude that the decision-maker might not be fair?
  - Findings of fact and conclusions of law are required for all quasi-judicial actions.

# KEY CONSIDERATIONS IN STRUCTURING ROLES, con't

- Workload of City Council, Planning Commission, DRB and Hearing Examiner.
  - Addition to legislative and administrative roles.
- Timing constraints.
  - BIMC 2.16.020.J.1 requires a final decision to be rendered on all project permits within 120 days from complete application.
- Availability of staff resources.

QUESTIONS?

OMW



OMW

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# The Process of Hearing and Deciding Land Use Applications

By  
Ted Hunter  
Sound Law Center

City of Bainbridge Island  
August 27, 2018

# The Process of Hearing and Deciding Land Use Applications

Appearance of Fairness

The Hearing

The Record

The Decision

# Appearance of Fairness

A decision maker must not only be fair, but must adhere to the appearance of fairness.

Personal Bias  
Financial Interest  
Ex Parte Contact

A hearing examiner should avoid ex parte contact and recuse if personal bias or financial interest emerges.

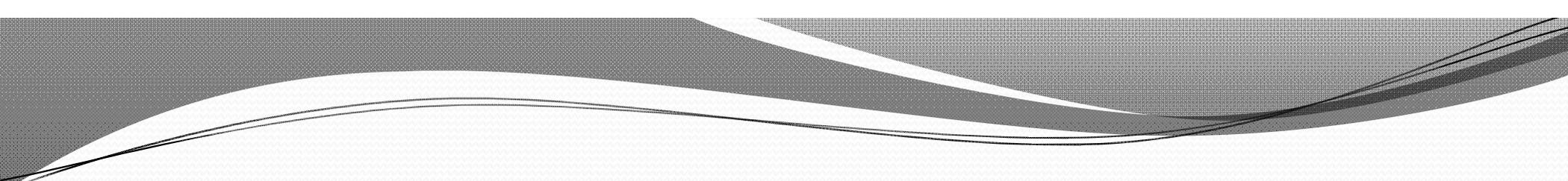
# The Hearing

Notice Determination

Order of Proceedings

Opportunity to be Heard

Rulings on Objections to Evidence  
(Hearsay, Irrelevance, etc.)

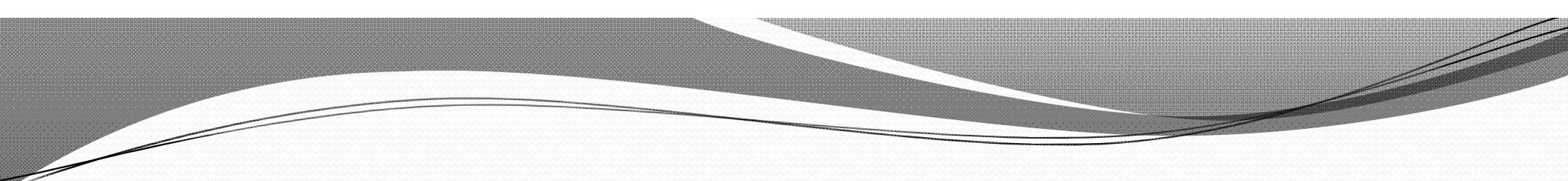


# The Record

Admission of Exhibits

Taking Testimony

Determination of Completeness



# The Decision

Identification of Record

Findings Supported by Reference to Record

Conclusions Supported by Findings

Decision & Conditions

# Questions, Comments or Concerns

Contact Information:

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COBI LAND USE WORKSHOP

**ROLES OF LAND USE  
DECISION-MAKING BODIES**

(or, how to make legally defensible decisions  
and keep your City out of court)

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City of Bainbridge Island  
August 27, 2018

# WHY DO LAND USE DECISION-MAKING ROLES MATTER?

“Unfortunately, it is now common that litigation often follows actions by local governments relating to land use.”

-- Futurewise, et. al. v. W.W.G.M.H.B., et. al.,  
164 Wn. 3d 242 (2008)



# Land use mistakes -- so what?

## Exposure to the city

- ❖ Invalidate City's Decision
- ❖ Money Damages Against the City
- ❖ Attorney Fees and Costs Imposed
- ❖ Bind the City to unintended result

## Individual (employee or officer) exposure

- ❖ Named as a Defendant
- ❖ Witness at Trial and witness Against Employer (City)
- ❖ Possible Un-Insured Personal Claims

## Expensive

- ❖ Document Intensive, time-consuming legal discovery
- ❖ Frequently vigorously Litigated
- ❖ Uses Valuable Officer and Personnel Time

## Politically damaging

- ❖ Emotional, personalized, politically motivated
- ❖ Bad P.R. for City
- ❖ Bad P.R. for individual decision-makers



# HIGH RISK LAND USE DECISION-MAKING

"There is danger in  
delay."

-- American proverb

"A danger foreseen  
is half avoided."

-- English proverb



# High risk land use actions: Examples

- ❖ Permits/approvals for adult entertainment businesses
- ❖ Gambling establishments – permitting, licensing, etc.
- ❖ Sign regulation - application, exemptions, etc.
- ❖ Large and/or complicated developments with tight timelines by the developer
- ❖ Wetlands regulations and reasonable use exemptions
- ❖ Impact and mitigation fees (application)
- ❖ Public nuisances and code enforcement



## High risk L.U. actions: Examples, cont.

- ❖ Permitting of large and /or controversial and /or politically charged projects like:
  - ❖ Shopping centers / Strip malls
  - ❖ Large subdivisions
  - ❖ Essential public facilities
  - ❖ Environmentally or historically sensitive projects
  - ❖ Mobile homes /mobile home parks
  - ❖ “Big box” commercial projects
- ❖ Siting/regulation of homeless camps (tent cities)
- ❖ Group homes – zoning, regulation, licensing, etc.
- ❖ Other unique, large or complicated proposals with big \$\$\$ at stake and/or public controversy



# WHAT TYPE OF DECISION ARE YOU MAKING?

LEGISLATIVE?

or

QUASI-JUDICIAL?

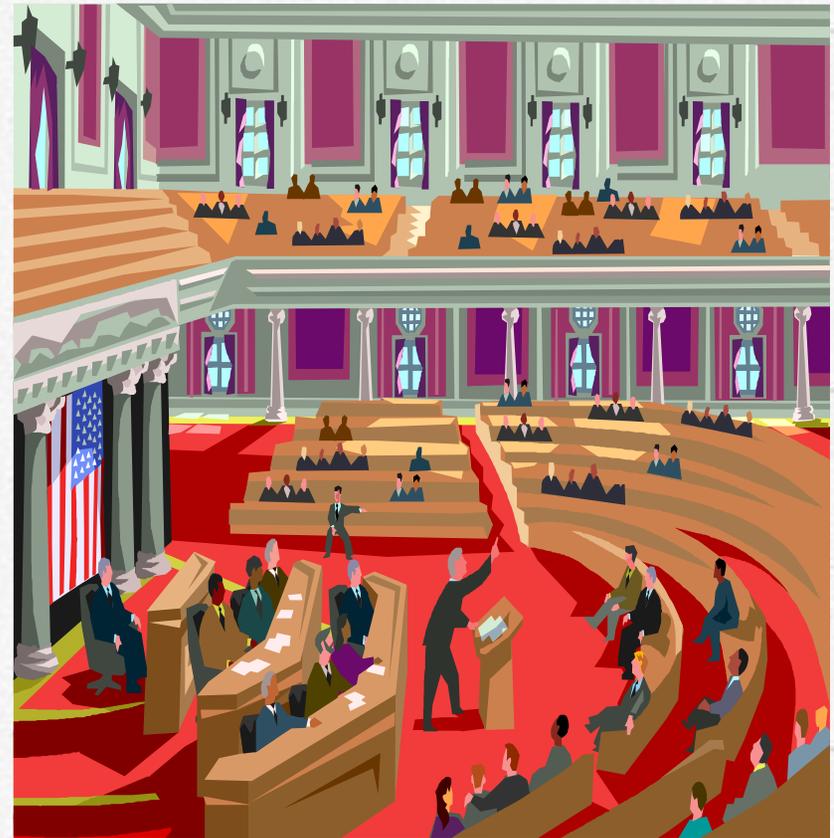
or

MINISTERIAL/  
ADMINISTRATIVE?



# LEGISLATIVE DECISION-MAKING

Policy law making  
by elected officials  
(city/county  
council) that take  
the form of  
ordinances, code  
amendments,  
resolutions,  
contracts, etc.



# Legislative decisions, Examples

## "Policy-Making"

- ❖ Capital improvements
- ❖ Comprehensive Plans/amendments
- ❖ Area-wide planning
- ❖ Adoption of zoning maps
- ❖ Adoption of GMA development regulations
- ❖ Adoption of general application ordinances
- ❖ Long-term city planning actions/decision
- ❖ Infrastructure planning/financing/extensions
- ❖ Annexations
- ❖ Contracts
- ❖ Inter-local agreements



# RISKS & BENEFITS -- legislative decision-making for councilmembers

- ❖ Lowest risk of the various roles for Councilmembers
- ❖ Strongest basis for immunity if sued
- ❖ Most defensible if judicial challenge
- ❖ Fewest legal challenges (in my experience)
- ❖ Very broad authority to set policy and legislate
- ❖ AOF not apply
- ❖ OPMA does apply
- ❖ You CAN talk to constituents about legislation/policy
- ❖ Generally, no findings and conclusions required
- ❖ Usually no deadline or time limits for legislating



# TIPS: for legislative decisions

- ❖ Always ensure that legislation is: (1) clear; (2) easy to understand; (3) not vague or ambiguous; and (4) not in conflict with state or federal law
- ❖ Ensure that all legislation has a legitimate public purpose i.e., advance public health, welfare, safety, or fiscal health of the city
- ❖ Use moratoria sparingly; ensure that state law requirements are met
- ❖ Ensure that legislation does not impair public or private contracts
- ❖ You can legislate – codify -- which decision-makers shall make decisions or recommendations, conduct hearings, or decide appeals, etc.
- ❖ Biggest risk: not requesting or following city attorney advice before taking high risk actions
- ❖ Always ensure to protect vested rights when enacting legislation, and incorporate into legislation (where appropriate)
- ❖ Do not use legislation to get involved in private property agreements, CCR's, homeowner's agreements, etc.
- ❖ Request and follow attorney advice when needed



# QUASI-JUDICIAL DECISION-MAKING

Judge-like decision made by hearing examiner, city council, board, or commission, on a contested land use application, involving discrete parties and a hearing



# Quasi-judicial decisions: Examples

“Judge-like decision”

- ❖ Subdivision/short plat approvals
- ❖ Conditional/special use permits
- ❖ Site plan approvals
- ❖ PUDs/PRDs/PDDs/MUPs
- ❖ Mixed-Use Developments
- ❖ Appeals of administrative decisions
- ❖ Variances/waivers
- ❖ Reasonable use exceptions
- ❖ Shoreline permits
- ❖ Boundary line adjustments (some)
- ❖ Site-specific rezones
- ❖ Other property-specific permits or approvals



# RISKS & BENEFITS – quasi-judicial decision-making for councilmembers

- ❖ Highest risk of the various roles for Councilmembers
- ❖ Lowest (weakest) basis for immunity if sued
- ❖ Least defensible if judicial challenge
- ❖ Most frequent legal challenges (in my experience)
- ❖ NO authority to set policy, do “visioning,” or to “make law”
- ❖ AOF does apply
- ❖ OPMA does not apply
- ❖ You CANNOT talk to constituents about the Q.J. matter (AOF)
- ❖ You can’t take sides
- ❖ Have to consider all evidence in the record; time consuming
- ❖ Usually short time limits to make decision. NO DELAY
- ❖ Decision limits: Must follow criteria in code or state law
- ❖ Must support decision with findings and conclusions
- ❖ Lots of limits on decision-making authority, and process requirements



# Quasi-judicial decisions: Some limits

- ❖ Standards MUST guide decision-making process
  - ❖ L.U. decision must be made in accordance with adopted standards
  - ❖ Standards should not be arbitrary or vague
  - ❖ Standards cannot reserve discretion to decision-maker on case-by-case basis
  - ❖ Standards must provide process for complying with statutory requirements
  - ❖ Decision must be made by determining application's compliance with standards
- ❖ Q.J. decision-makers must NOT interfere with the staff process
  - ❖ Don't meddle in staff's decision-making or process
  - ❖ Don't interfere with or delay processing of the permit
  - ❖ Big \$\$\$ cases where decision-makers interfered with staff or process:
    - ❖ Mission Springs, Inc. v. City of Spokane, 134 Wn. 2d 947 (1998)
    - ❖ Westmark Dev. Corp. v. City of Burien, 140 Wn. App. 540 (2007)
    - ❖ K & S Developments v. City of SeaTac, K.C. # 12-2-40564-6 KNT (2016)
    - ❖ Maytown Sand and Gravel LLC v. Thurston County, 198 Wn. App. 56 (2017)
- ❖ Q.J. decision-makers must apply the facts to the law
  - ❖ No policy discretion
  - ❖ Must apply legal standards to the facts in the record – LIKE A JUDGE
  - ❖ "The Council seems to have heard clearly the citizen complaints and the comments of one of its own members while disregarding the record. We cannot escape the conclusion, in view of the evidence in support of Maranatha's application, that the council based its decision on community displeasure and not on reasons backed by policies and standards as the law requires."  
Maranatha Mining v. Pierce County, 59 Wn. App 795 (1990)



# Quasi-judicial decisions: Limits, cont.

- ❖ Q.J. decision-makers must support the decision with “substantial evidence”
  - ❖ Must be adequate evidence in the record to support the F & C and decision. Eg.: decision can't be based on:
    - ❖ unsubstantiated, generalized fears of area residents
    - ❖ Community displeasure
    - ❖ Adverse aesthetic impacts (unless code provides as a criterion)
- ❖ Must support the decision with proper findings of fact and conclusions of law
  - ❖ Written decision is needed
  - ❖ Findings on each element or criterion
  - ❖ Follow legal requirements for F & C
- ❖ Permit standards can't be changed mid-process
  - ❖ Governed by (1) V.R. doctrine; (2) Reg. Reform; (3) A & C standards
  - ❖ “Fundamental land use planning choices made in adopted comprehensive plans and development regulations shall serve as the foundation for project review.” RCW 36.70B.030(1)



# Quasi-judicial decisions: Limits, cont.

- ❖ The City doesn't represent anyone and can't take sides
  - ❖ In applying the law to the facts, the City (Planning Commission, City Council or other decision-maker) acts as a neutral decision maker – not as a representative or advocate for the applicant, or neighboring property owners or project opponents
  - ❖ Can't submit Q.J. applications or process to popular vote or initiative process
  - ❖ Citizens may ask "who will represent the people?" The answer is, the City may not do so in a quasi-judicial process. All sides must represent themselves
- ❖ Decision-makers must comply with the AOF
  - ❖ Hearings must both appear fair and actually be fair
  - ❖ No backroom deals or off the record conversations
  - ❖ Follow the rules re: AOR (below)
- ❖ Decision cannot be arbitrary and capricious
  - ❖ A & C decision or process means the decision is void, the city loses, and the city may have to pay \$\$\$
  - ❖ Follow the rules re: A & C



# TIPS: for quasi-judicial decisions

- ❖ Follow your code and state law
- ❖ No policy-making, "visioning" or city goals
- ❖ Recognize and enforce vested rights
- ❖ Consider all of the evidence
- ❖ Do not offer, request or accept favors, gifts or special processes
- ❖ Make decisions timely (no delay):
  - ❖ Check and follow your code!
  - ❖ RCW 36.70B.070(1) – 28 days to respond to application
  - ❖ RCW 36.70B.070(4) – 14 days to respond to additional info.
  - ❖ RCW 36.70B.080(1) – 120 days to act on application
  - ❖ Your code may have shorter or different deadlines



## TIPS: quasi-judicial decisions, cont.

- ❖ Decisions must be competitively neutral and applied non-discriminately
- ❖ DO NOT condition on: (1) financial viability; (2) technical capability or expertise; (3) disclosure of proprietary information; or (4) waiving legal rights
- ❖ DO NOT get involved in private property agreements, CCR's, homeowner's agreements, etc.
- ❖ Treat all permit applicants equally and consistently
- ❖ Don't promise, guarantee or assure specific decisions or approvals



## TIPS: quasi-judicial decisions, cont.

- ❖ Always have good written findings and conclusions
- ❖ Don't let citizen complaints or community displeasure influence decision
- ❖ Recommendation: Use a hearing examiner for all final (or appeal) quasi-judicial decisions or for administrative appeals
- ❖ Do not base decisions on "what's good for the community" or on "the best interests of the city"
- ❖ Base decisions on "substantial evidence" in the record
- ❖ Remember – you are the "umpire" to ensure code and law compliance; don't take sides
- ❖ **No politics!**



# ADMINISTRATIVE/MINISTERIAL DECISION-MAKING

Ministerial (administrative) permits are simple permits or approvals (grading or building permits, for example) typically handled at the staff level, and without a hearing. Once city code requirements are satisfied, the permit must be issued. No politics, delay or discretion allowed.



# Ministerial decisions: Examples

“simple, staff-level permits”

- ❖ Building permits
- ❖ Grading and clearing permits
- ❖ Tree cutting permits
- ❖ Street use permits
- ❖ Engineering or design approvals
- ❖ Utility connection permits
- ❖ Boundary line adjustments (some)
- ❖ Other simple routine permits typically issued by staff, without process or hearing



# RISKS & BENEFITS – administrative / executive decision-making for councilmembers

- ❖ Usually not allowed by charter or code; typically reserved to department director(s) or staff. Not recommended as a role for councilmembers
- ❖ If used, typically low risk of the various roles for Councilmembers
- ❖ If used, low (weak) basis for immunity if sued
- ❖ If used, moderately defensible if judicial challenge
- ❖ Very few legal challenges (in my experience)
- ❖ NO authority to set policy, do “visioning,” or to “make law”
- ❖ AOF does apply
- ❖ OPMA likely does apply
- ❖ You CANNOT talk to constituents about the matter (AOF)
- ❖ You can’t take sides
- ❖ May be short time limits to make decision. NO DELAY
- ❖ Decision limits: Must apply criteria in code or state law to the application; NO DISCRETION allowed



# TIPS: for ministerial decisions

- ❖ Ministerial permits are NOT discretionary; once code/statute requirements are met, must issue promptly
- ❖ Follow strictly ALL statutory and code criteria
- ❖ DO NOT DELAY – issue promptly (follow your code or State law deadlines (e.g., 120 day rule))
- ❖ DO NOT interject city council or politics into administrative process or decision-making
- ❖ Ensure that decision-making/issuance is not: (1) unreasonable; (2) cost-excessive; (3) delay ridden; or (4) burdensome permit review processes
- ❖ DO NOT impose excessive or unreasonable bonding or indemnification requirements



## TIPS: administrative decisions, con'd.

- ❖ Permit decisions must be competitively neutral and applied non-discriminately
- ❖ Cannot condition ministerial permits on: (1) financial viability; (2) technical capability or expertise; (3) disclosure of proprietary information; or (4) waiving legal rights
- ❖ DO NOT get involved in private property agreements, CCR's, homeowner's agreements, etc.
- ❖ Treat all ministerial permit applicants equally and consistently (same process)
- ❖ Don't promise, guarantee or assure specific decisions or approvals of permits
- ❖ Follow "Tips" for avoiding arbitrary and capricious decisions
- ❖ Request and follow attorney advice when needed



# THE HEARING EXAMINER

"The Hearing Examiner is responsible for conducting hearings on and adjudicating quasi-judicial cases involving a variety of complex land use and regulatory compliance issues, and other issues which the City Council may designate to the Hearing Examiner by ordinance. ..."

-- BIMC 2.14.030

Walter, COBI - Land Use Roles



08-27-18

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# Hearing Examiner: Authority

- ❖ State law: RCW 35A.63.170
  - ❖ Broad authority over L.U. applications, administrative appeals and SEPA appeals
  - ❖ Only instance in which the State Legislature has mandated that legislative bodies make decisions on land use matters: **Area-wide/general applicability zoning decisions/rezones**
- ❖ Your City Code authorizes: BIMC 2.14.030
  - ❖ Also: Land Use Policy 6.8 of COBI Comprehensive Plan
- ❖ Jurisdiction/limits: BIMC 2.14.060, and other authority as conferred by ordinance
- ❖ Other sections of BIMC ch. 2.14 (roles and responsibilities for L.U. decision-making) and ch. 2.16 (Land use review procedures) which may be applicable: (1) requirements and process to receive and examine available information; (2) conduct public hearings; (3) and enter findings of fact and conclusions of law; (4) issue a decision or recommendation, as applicable.



# Hearing Examiner: Reasons to use

- ❖ Avoids political influence or pressure (not allowed in Q.J. decisions)
- ❖ They are professional – specially trained
- ❖ They have experience with many different jurisdictions and regulations
- ❖ They are technically adept, and have knowledge of physical land development and technical feasibility
- ❖ More cost effective (reduces appeals and judicial challenges)
- ❖ Allows for a more efficient process (faster decisions)
- ❖ Substantial reduction in judicial (court) reversal of decision
- ❖ Substantial reduction in potential legal /damages claims against the city
- ❖ Eliminates potential legal claims against citizen-decision makers personally – like Planning Commission and City Council members
- ❖ Instills public confidence in the decision-making process



# Hearing Examiner: Reasons, cont.

- ❖ Helps ensure constitutional protection of due process of law and equal protection
- ❖ Helps ensure predictability and consistency in the process
- ❖ Provides good customer service
- ❖ Hearing examiners are skilled in understanding, interpreting and applying nuances of municipal code and general legal principles
- ❖ Use of a hearing examiner helps satisfy State law requirements for streamlining the regulatory process and administrative review and appeals (1995 Regulatory Reform Act, RCW Chapter 36.70B)
- ❖ Use of a hearing examiner segregates and clearly delineates quasi-judicial decision making functions from legislative (law-making) and long-term planning functions (which are the functions of planning commissions and city councils)
- ❖ Frees up city council and planning commission time for other important planning, goal setting and law-making functions.



# ONE EXAMPLE: Mission Springs v. Spokane

“ [T]he council interjected itself into the administrative process reserved to the City Manager notwithstanding clear and unequivocal charter mandate to the contrary.”



# Mission Springs - Background

- ❖ Developer Mission Springs submitted all required paperwork and met all required conditions and steps necessary to get approval of a planned unit development that would increase traffic in the area.
- ❖ M.S. PUD application was granted August 31, 1992, at which point they were vested for five years under laws in effect at that time.
- ❖ M.S. obtained grading and building permits in 1993, but did not utilize them before they expired. In 1994, they filed an identical application for building permits. Spokane's building officer briefed City Council on the applications, and advised they were ready to issue the permits.
- ❖ City Council, against the advice of the City Attorney, directed the City Manager to refuse to deny the permits under the guise of wanting to conduct additional traffic studies.
- ❖ During a City Council meeting, councilmembers opposing the development said they "ha[d] the opportunity to put a stop to [the development]" and "[I]et's see how confident [Mission Springs is]."



# Mission Springs – The lawsuit

- ❖ M.S. sued the City of Spokane, the Spokane City Council, the City Manager, the Mayor, and each member of the City Council and their spouses for damages.
- ❖ The lawsuit brought claims under RCW ch. 64.40, which creates a cause of action for damages resulting from actions that are arbitrary, capricious, unlawful, or exceed lawful authority, and under 42 U.S.C. Section 1983, alleging violation of their constitutionally protected property rights.
- ❖ The Washington Supreme Court held the councilmembers' actions in exceeding their roles and interfering with ministerial permits (among other things) violated both Ch. 64.40 and Sec. 1983, and that legislative immunity did not protect the individuals. The Council members were individually liable for damages and attorneys' fees, as well as the City.
- ❖ The City eventually settled all claims for well over \$1 million as well as other conditions, including an expedited permit process.



# Mission Springs – Key Court rulings

- ❖ Applicants for grading and building permits are entitled to immediate issuance upon satisfaction of relevant ordinance criteria and SEPA requirements. Issuance is not discretionary but rather ministerial.
- ❖ Neither a grading permit, building permit, or any other type of ministerial permit may be withheld at the discretion of a local official to allow time to undertake a further study.
- ❖ Courts have recognized developers have a constitutionally cognizable property right in a grading permit and the right to use and enjoy the land.
- ❖ An act undertaken by a municipal legislative body is an act of the municipality. The City Council's act of ordering the City manager to refuse to process the permits was attributed to the City, creating City liability.
- ❖ The councilmembers were not protected by legislative immunity because their acts were executive in nature, and they exceeded their authority and improperly stepped into the staff's ministerial decision-making.



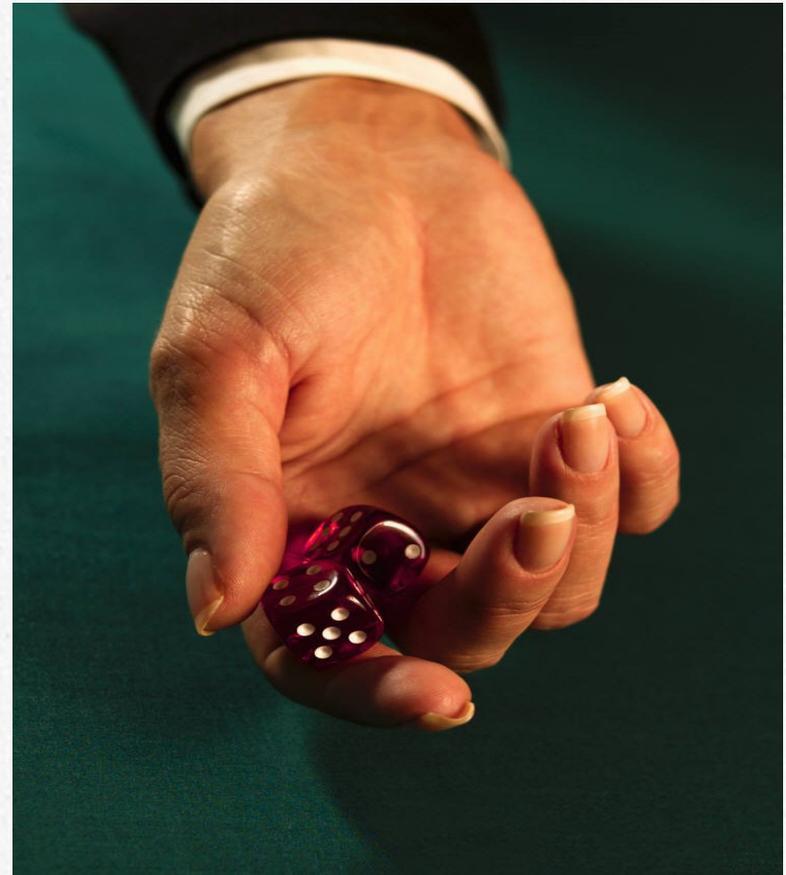
# Mission Springs – What the Court said

- ❖ (finding the councilmembers acted irrationally) “The actions of the City Council were at least two steps removed from that reason which is required.”
- ❖ “[T]he council interjected itself into the administrative process reserved to the City Manager notwithstanding clear and unequivocal charter mandate to the contrary.”
- ❖ “Although the irrationality is objectively established by the departure from the mandatory legal process, we note the irrationality is further dramatized by the overt rejection of advice from the City's own attorney in favor of a defiant course of action[.]”
- ❖ “Therefore we have rather a straightforward situation where clear legal rights of the citizen were violated by city council members acting in excess of their lawful authority and by a City Manager acting in excess of his own lawful authority but at the urging of the City Council. **As one lawyer once put it, “What is to be done?”**”



# ARBITRARY & CAPRICIOUS DECISION-MAKING

"A decision which is made willfully and unreasonably, without consideration and in disregard of the facts or circumstances."



# Arbitrary & capricious: Results of wrongful decision-making

- ❖ Mixing, co-mingling or confusing rules for different L.U. roles can lead to an A & C decision ... and liability
- ❖ A standard of liability (not a stand-alone claim)
- ❖ If found to be A & C, decision is INVALID
- ❖ May establish basis for damages (RCW ch. 64.40, Sect. 1983, tortious interference, etc.)
- ❖ Potential personal liability
- ❖ Time, cost and embarrassment of re-doing process and decision
- ❖ Erodes public confidence in the city and L.U. process



# Arbitrary & capricious: Examples

- ❖ Failing to make findings and conclusions
- ❖ Ignoring/not applying the law
- ❖ Applying the wrong law
- ❖ No evidence in record to support decision
- ❖ Ignoring evidence in the record
- ❖ Imposing standards or criteria not authorized by statute or code
- ❖ Waiving standards or requirements (where code not allow)
- ❖ Basing decisions on “NIMBY” complaints or issues
- ❖ Making decisions based on economic viability of a project
- ❖ Ignoring city attorney advice (Mission Springs case)



# Arbitrary & capricious: Examples, cont.

- ❖ Making Q.J. or ministerial decisions based on political agenda or motives
- ❖ Making Q.J. or ministerial decisions based on number of proponents or opponents
- ❖ Applying legislative policies, goals, or “visioning” when deciding Q.J. or ministerial applications
- ❖ Basing decisions on community desires, displeasure, public sentiment or complaints
- ❖ Putting application to a popular vote
- ❖ Adding/changing conditions of a plat at final plat stage
- ❖ Wrongfully delaying (stalling) permits or decisions



# TIPS: to avoid arbitrary and capricious decisions

- ❖ Don't make up or guess at standards or criteria
- ❖ Don't make decisions on political gain or for political reasons
- ❖ Rely on honest and credible data in record to support decisions
- ❖ Don't base decision on community desires or displeasure, etc.
- ❖ No policy-making, "visioning" or city goals
- ❖ Recognize and enforce vested rights
- ❖ Consider all of the evidence
- ❖ Make decisions timely (your code or 120-day rule)
- ❖ Always include good written findings and conclusions
- ❖ Use a hearing examiner for all final (or appeal) quasi-judicial decisions or for administrative appeals
- ❖ Do not base decisions on "what's good for the community" or on "the best interests of the city," or for "NIMBY" reasons
- ❖ Base decisions on "substantial evidence" in the record



# THE APPEARANCE OF FAIRNESS DOCTRINE (AOF)

"No municipal officer may accept employment or engage in business or professional activity that the officer might reasonably expect would require or induce him or her by reason of his or her official position to disclose confidential information acquired by reason of his or her official position."

-- RCW 42.23.070(3)



# AOF: What is it?

- ❖ Statutory requirement for all quasi-judicial meetings, hearings and decisions
- ❖ Not apply to legislative decisions
- ❖ Hearing & decision must (1) be fair in fact; and (2) appear fair to others
- ❖ Test:

“Would a reasonable person, apprised of the totality of a member’s personal interest or involvement be reasonably justified in thinking that the involvement might affect the member’s judgment?”



# AOF: Who does it apply to?

- ❖ Only quasi-judicial hearings & decisions (acting like a judge):
  - ❖ specific parties, property or application
  - ❖ hearing or other action
  - ❖ determine rights, duties or privileges of specific parties or property
- ❖ Examples of actions/decisions:
  - ❖ Plats (short & full)
  - ❖ Site plans
  - ❖ All permits
  - ❖ Site specific rezones
  - ❖ Variances, SUP's, CUP's, MUP's, etc.
  - ❖ Other Q.J. development applications and projects
- ❖ Examples of decision-makers:
  - ❖ City council members
  - ❖ Planning commission members
  - ❖ Board of Adjustment members
  - ❖ Hearing Examiners
  - ❖ Permit staff
  - ❖ Other decision-making boards and commissions



# AOF: Prohibited acts

- ❖ Prejudgment, bias or appearance of partiality
- ❖ Business relationships
- ❖ Social relationships
- ❖ Marital relationships
- ❖ Ex-parte communications with proponent or opponent
- ❖ Conflicts of interest, proximity to project, etc.
- ❖ Membership in organizations
- ❖ Personal benefit/detriment
- ❖ Hostile, rude or antagonistic comments or actions



# AOF: Ex parte contacts

- ❖ The rule: No ex parte contacts with opponents or proponents during pendency of quasi-judicial action
- ❖ Applies even where no formal application submitted, if decision-maker has knowledge of application or potential plans, etc.
- ❖ If violated: disclose substance of the communication on the record and offer rebuttal



# AOF: Disclosure and waiver

- ❖ BIG RULE: If in doubt, disclose!
- ❖ Make disclosure at earliest opportunity, ON THE RECORD
- ❖ Disclose all important details
  - ❖ Who, what, when, where, etc.
  - ❖ Have pre-prepared disclosure statement
- ❖ If no objection at time of disclosure, later objections/challenges are WAIVED



# AOF: Consequences

- ❖ Invalidation. Action is null and void
- ❖ Potential claims:
  - ❖ To City
  - ❖ To individual violator
- ❖ May provide evidence of arbitrary and capricious action or decision
- ❖ Potential attorneys' fees
- ❖ Other impacts to city:
  - ❖ Embarrassment
  - ❖ Loss of public confidence



# AOF: How to comply

- ❖ Be aware of AOF, no bias, and disclosure obligations and comply with them.
- ❖ If possible – avoid communications on pending or forthcoming applications up front
- ❖ Rule if violation: DISCLOSE, DISCLOSE, DISCLOSE!
- ❖ Think of consequences to your city and the process – not of just yourself
- ❖ Steps to compliance:
  - ❖ #1 – Disclose
  - ❖ #2 – If challenged, step down and leave the room
  - ❖ #3 – Continue the hearing, or – if necessary
  - ❖ #4 – Cancel hearing and continue/re-start it



# YES, IT DOES MATTER.

"These are difficult times for property owners, community groups and municipalities, the triumvirate involved in every major land use issue. . . . Peace may not be at hand, but the courts and the agencies charged with applying land use and environmental regulations have a responsibility to be even-handed and balance the competing concerns."

The Overlake Fund v. Shoreline Hearings Board,  
90 Wn. 2d 746 (1998)





CITY OF  
BAINBRIDGE ISLAND

## City Council Study Session Agenda Bill

**MEETING DATE:** September 4, 2018

**ESTIMATED TIME:** 5 Minutes

**AGENDA ITEM:** (8:05 PM) Lodging Tax Advisory Committee Appointment - Mayor Medina,

**STRATEGIC PRIORITY:** Good Governance

**PRIORITY BASED BUDGETING PROGRAM:**

**AGENDA CATEGORY:** Appointment

**PROPOSED BY:** City Council

**RECOMMENDED MOTION:**

I move to confirm the appointment of John Dinsmore to the Lodging Tax Advisory Committee, to serve as a lodging representative for a term ending upon completion of the 2019 funding cycle recommendations.

**SUMMARY:**

In June, 2018, the City Council appointed four members to the Lodging Tax Advisory Committee ("LTAC") to participate in reviewing proposals for the 2019 LTAC funding cycle. One of the members could no longer serve on the committee, which created a lodging representative vacancy.

The City received two applications. The applicants were reviewed by Councilmembers Matthew Tirman (LTAC Chair) and Rasham Nassar (LTAC Co-Chair) and their recommendation is that Mr. Dinsmore's application be forwarded to Mayor Medina for consideration and appointment.

This appointment will fill the vacancy with an eligible lodging representative and will allow the committee to proceed in its work as scheduled.

**FISCAL IMPACT:**

<b>Amount:</b>	
<b>Ongoing Cost:</b>	
<b>One-Time Cost:</b>	
<b>Included in Current Budget?</b>	

**BACKGROUND:**

**ATTACHMENTS:**

[Dinsmore \(redacted\) - LTAC.pdf](#)

[James \(redacted\) - LTAC.pdf](#)

**FISCAL DETAILS:**

**Fund Name(s):**

**Coding:**

**From:** [noreply@civicplus.com](mailto:noreply@civicplus.com)  
**To:** [Roz Lassoff](#)  
**Subject:** Online Form Submittal: Citizen Advisory Group Application  
**Date:** Saturday, August 18, 2018 1:52:23 PM

---

## Citizen Advisory Group Application

### Step 1

Please complete the form below if you are interested in serving on a committee or commission. Once completed, this form will become part of the City's Volunteer Roster. Please note: once submitted, this application becomes a public record. Your address and contact information will not be shared.

Applicant Name	John Dinsmore
Email	gm@marshallsuites.com
Phone	
Address	350 High School Rd. NE
City	Bainbridge Island
State	WA
Zip	98110
Current Employer	The Marshall
Current Position	General Manager
I am interested in serving on one of the following advisory groups (select all that apply):	Lodging Tax Advisory Committee (Seeking One Lodging Representative)
<b>Experience &amp; Qualifications</b>	
Have you served on any city advisory groups in the past?	No
If so, please indicate which groups:	<i>Field not completed.</i>
Please share your qualifications for this appointment (skills,	With 12 Years Experience in the Hospitality Industry, I believe I am well qualified to serve in this capacity.

activities, training,  
education) if any:

---

Please share your  
community interests  
(groups, committees,  
organizations) if any:

---

350 High School Rd. NE

Feel free to attach your  
resume (optional):

---

*Field not completed.*

Type the Year

---

2018

How did you hear  
about the volunteer  
opportunity?

---

Other - See below

Other

---

Jerri Lane

Email not displaying correctly? [View it in your browser.](#)

**From:** [noreply@civicplus.com](mailto:noreply@civicplus.com)  
**To:** [Roz Lassoff](#)  
**Subject:** Online Form Submittal: Citizen Advisory Group Application  
**Date:** Monday, August 13, 2018 2:43:37 PM

---

## Citizen Advisory Group Application

### Step 1

Please complete the form below if you are interested in serving on a committee or commission. Once completed, this form will become part of the City's Volunteer Roster. Please note: once submitted, this application becomes a public record. Your address and contact information will not be shared.

Applicant Name	Brenda James
Email	
Phone	
Address	
City	Bainbridge Island
State	WA
Zip	98110
Current Employer	Bainbridge Lodging Association
Current Position	Blogger/Writer
I am interested in serving on one of the following advisory groups (select all that apply):	Lodging Tax Advisory Committee (Seeking One Lodging Representative)
<b>Experience &amp; Qualifications</b>	
Have you served on any city advisory groups in the past?	No
If so, please indicate which groups:	<i>Field not completed.</i>
Please share your qualifications for this appointment (skills,	I am serving on 2 HOA Boards and 2 nonprofit Boards. I have been a High School English Teacher in the past and currently still work as a Substitute Teacher.

activities, training, education) if any:

---

Please share your community interests (groups, committees, organizations) if any:

Bainbridge Lodging Association North Town Woods HOA  
Commodore West HOA Sakai PTO

---

Feel free to attach your resume (optional):

*See attached*

---

Type the Year

2018

---

How did you hear about the volunteer opportunity?

City Announcement

---

Other

*Field not completed.*

---

Email not displaying correctly? [View it in your browser.](#)

# Brenda James

## Experience

1997-2000 Central Oahu School District Honolulu, HI

### Teacher

Created Lesson Plans.

Managed classes of up to 35 students.

Collaborated with other teachers to decide on curriculum.

Implemented curriculum and lesson plans.

2001-2008, 2013-present Bainbridge Island School District Bainbridge Island, V

### Substitute Teacher

Implement lesson plans.

Manage classes of up to 35 students.

2004-2009 Caffe Vita Coffee Roasting Company Seattle, WA

### Merchandising Manager

Collaborated with grocery managers on ordering coffee.

Delivered and merchandised coffee.

Promoted and demonstrated coffee.

## Education

1986-1990 University of Washington Seattle, WA

B.A., Psychology.

1995-1997 Chaminade University Honolulu, HI

Secondary Education Certificate, English

## Interests

Boating, biking, travelling, writing

## Volunteer

1993-1995 Friendship Services Vallejo, CA

1997-2000 Volunteer Guardian Ad Litum Honolulu, HI

2005-Present Interfaith Volunteer Caregivers Bainbridge Island, WA

2016-Present PTO Board, Ordway Elementary School Bainbridge Island, WA

2011-Present Board of Commodore West HOA Bainbridge Island, WA

2016-Present Board of Kitsap Rescue Mission Bremerton, WA

2015-Present Board of Bainbridge Island Little League Bainbridge Island WA



CITY OF  
BAINBRIDGE ISLAND

## City Council Study Session Agenda Bill

**MEETING DATE:** September 4, 2018

**ESTIMATED TIME:** 30 Minutes

**AGENDA ITEM:** (8:10 PM) Funding Mechanism for City's Public Art Program and Funding Request from Arts and Humanities Bainbridge (AHB) - Executive,

**STRATEGIC PRIORITY:** Healthy and Attractive Community

**PRIORITY BASED BUDGETING PROGRAM:**

**AGENDA CATEGORY:** Discussion

**PROPOSED BY:** Executive

**RECOMMENDED MOTION:**

Discussion

**SUMMARY:**

To discuss whether to change to a "fixed funding" mechanism for the City's annual financial support for the Public Art Program. To receive and discuss a request from Arts and Humanities Bainbridge (AHB) for City funding for AHB's administrative support of the Public Art Committee.

**FISCAL IMPACT:**

<b>Amount:</b>	
<b>Ongoing Cost:</b>	
<b>One-Time Cost:</b>	
<b>Included in Current Budget?</b>	

**BACKGROUND:** Please see attached briefing memo from City staff, which includes the December, 2017, recommendation from the City Council Ad Hoc committee.

Please see attached materials provided by Arts and Humanities Bainbridge (AHB) and the Public Art Committee (PAC).

**ATTACHMENTS:**

[Memo on Public Art Program - CC 28 Aug 2018.pdf](#)

[PAC Proposal Slides 8.7.18.pdf](#)

[PAC Background Narrative 8.6.18.pdf](#)

[Appendix - PAC Proposal 8.7.18.pdf](#)

**FISCAL DETAILS:**

**Fund Name(s):**

**Coding:**



CITY OF  
BAINBRIDGE ISLAND

MEMORANDUM

DATE: 8/28/2018  
TO: City Council  
Doug Schulze, City Manager  
FROM: Morgan Smith, Deputy City Manager  
SUBJECT: Requests Related to the City's Public Art Program

---

The purpose of this study session discussion is to review two aspects of planning for the City's Public Art Program. Council feedback will be used to inform the 2019-2020 Biennial Budget. This discussion follows evaluation completed by a City Council Ad Hoc Committee (Roth, Townsend and Scott) during 2017 (see attached memo for the Council Ad Hoc Committee's recommendation from December, 2017).

The current estimate for the City's Public Art Subfund at year-end (12/31/18) is \$91,000.

**A. City funding to support the Public Art Program**

Currently, the City applies a formula as part of each year-end close-out to calculate an amount of funding that is transferred from the General Fund to the Public Art Subfund. This methodology is described in BIMC 3.080.020(C). In 2017, City staff and the Ad Hoc Committee members reviewed the problems with this methodology:

- It does not allow for long-range planning, as the amount of the fund transfer varies significantly from year to year,
- It does not allow for community insight into the level of City support for the Public Art Program, since the fund transfer occurs outside of the City budget process, and
- Due to the complexity of the calculation methodology, it is cumbersome for City staff to complete the annual calculation.

The Council Ad Hoc Committee concluded that a “fixed funding” approach would be preferred in order to improve visibility for the City’s financial support of the Public Art Program, and to improve long-range planning for the program. That recommendation was presented to the Public Art Committee (PAC) in November, 2017 with a request for PAC’s feedback. The PAC has recently indicated it is supportive of moving to a fixed annual amount of funding.

If City Council supports this change in the funding methodology, the next steps would be:

1. **Determine a level of funding for 2019-2020 Biennial Budget.** PAC proposes \$84,000 per year, with annual escalation equal to CPI.
  - o Previous Council discussion (during 2015) focused on an annual contribution range of \$30,000 - \$60,000.
  - o Average annual contribution since funding was reinstated, using the current methodology, has been approximately \$24,000.

2016 Funds	2017 Funds	2018 Funds
\$ 7,359	\$ 18,040	\$45,536

- o The City’s existing art portfolio continues to age, and requires annual maintenance and repairs of roughly \$5,000 - \$10,000 per year.
  - o Continuation of the Something New rotating art displays may require recurring funds for annual administration and management. Budget for these items for the pilot year (2018) was \$12,500. PAC has not yet presented City Council with a formal recommendation/request for continuation of this project, but is expected to do so.
  - o Remaining funds are available to support new public art projects, such as the Tribute Baskets at Waypoint Park.
  - o Other significant City community service programs (human services, cultural funding, economic development) do not provide for automatic escalation in funding. Instead, City Council establishes budgets for these items as part of budget development in each biennial. Adopting an automatic escalation for Public Art Program funding is not recommended by City staff.
2. **Amend BIMC 3.80.020(C).** This Code section describes the current year-end calculation that is used to determine annual funding for the Public Art Program. Staff can develop an amendment to reflect the change to a provide Public Art Program funding through the City’s biennial budget process. This Code amendment would be provided to City Council for consideration before the end of 2018, so that it could be implemented for 2019-2020.

**B. Arts and Humanities Bainbridge (AHB) proposal to provide administrative support to the Public Art Committee.**

The Public Art Committee has a different structure from other City advisory committees and is not, technically, a City committee and members are not appointed by the City Council. Instead, the long-standing practice is for Arts and Humanities Bainbridge (AHB), a 501(c)(3) non-profit, to recruit and appoint PAC members and for the PAC Chair to be a member of the AHB Board.

PAC members meet monthly at the AHB offices. Administrative support for these meetings and other PAC tasks is provided by AHB staff. This arrangement grew out of AHB's previous role as the City's "designated agent" for Cultural Element Implementation. As part of the City's recent Comprehensive Plan Update, the City eliminated this designation (BIMC 2.42 and BIMC 3.82 were rescinded in March, 2017).

AHB proposes annual funding from the City of \$24,000 as fees to continue their administrative support of PAC. If the City wishes to continue to have PAC structured as a separate, external committee, it may be reasonable to provide AHB (or another source) with financial support to perform administrative tasks on behalf of PAC. As a point of reference, \$2,000 per month represents approximately 16 hours per week of staff time (assuming \$30 per hour), or 8 days per month of staff support.

Unlike most administrative/operational issues, the decision whether to provide an outside organization with management fees related to Public Art, and if so how much, is one that City Council must decide per the City's Municipal Code:

**BIMC 3.080.040 Management**

*The city's public art works program shall be managed as directed from time to time by the city council. To the extent that any portion of the management is delegated to a private entity, such management shall be in accordance with a written agreement approved by the city council.*

If City Council supports AHB's request for funding to provide administrative support for PAC, the next steps would be:

1. Determine the level of funding for 2019-2020 Biennial Budget. PAC proposes \$24,000 per year.
2. Determine the source of funding for PAC administrative support. Since this expense is fully related to the Public Art Program, staff recommend that any expenditure should be budgeted as an expense for the Public Art Subfund.
3. Execute a professional services agreement. Staff can develop a professional services agreement to capture the scope of work for AHB's services. This agreement can be provided to City Council for consideration before the end of 2018, so that it can be effective January 1, 2019.



CITY OF  
BAINBRIDGE ISLAND

MEMORANDUM

**Date:** 12/12/2017

**To:** City Council  
Doug Schulze, City Manager

**From:** Cultural Element Funding Ad Hoc Committee:  
Councilmembers Wayne Roth, Michael Scott, and Roger Townsend

**Subject:** Proposed Change in Funding Mechanism for City's Public Art Program

---

**Ad Hoc Committee Scope of Work:**

**1. To consider the Cultural Element Implementation Funding provided in the City's 2017-18 Budget (\$150,000 annually). To provide City Council with a proposal that identifies goals for these funds, a process for distribution, and a process for reporting on the use and impact of these funds.**

*Result: A new, two-year funding process was proposed by the Ad Hoc Committee and approved by City Council in July, 2017. A new citizen advisory committee was established, and an RFP was issued in the Fall to solicit community proposals for 2018-19 activities. The advisory committee has delivered a funding recommendation to the City Council for consideration and approval before the end of the year.*

**2. To consider whether the City should identify a "designated agent" for Cultural Element Implementation.**

*Result: As part of the City's Comprehensive Plan Update, the City rescinded BIMC 2.42 and BIMC 3.82 in March, 2017.*

**3. To consider the City's Public Art Program and propose to City Council any recommendations related to funding, structure, and administrative support for this program that may be appropriate in light of #1 and #2 above.**

*Result: Please see recommendation below to revise BIMC 3.80.020(C) to establish a fixed funding mechanism for the City's Public Art Program.*

**Background:**

In 2015, City Council reinstated a funding mechanism for the Public Art Program that applies a 2% rate on eligible capital expenses. This mechanism is described in [BIMC 3.80.020](#).

This funding mechanism generated roughly \$7,000 in funding from 2015 capital projects, and \$18,000 in funding from 2016 capital projects. It is, however, a somewhat cumbersome method that adds complexity for both Finance and Public Works staff in project planning and year-end close out. This approach also results in a funding stream that is not possible to forecast with much accuracy, and has a high degree of variability from year-to-year.

Another option the City considered in 2015 was to provide a fixed amount of funding each year. This would eliminate the additional internal administrative effort, and would provide the Public Art program with a stable and predictable level of funding. This approach would also make the City's financial support for the Public Art program more transparent and visible to the community, as it would be presented as a specific line item with the Community Services – Public Art section of the City's annual budgets.

**Recommendation for Fixed Annual Funding**

To implement a fixed amount of annual funding, the City Council would need to approve a revision to BIMC 3.080.020 to remove the description of the current percentage mechanism. This section could be replaced with language that reflects Policy 1.2 of the Cultural Element of the Comprehensive Plan, for example:

“The City will provide financial support for the arts and humanities through the City's biennial budget process.”

In 2015, the City considered scenarios for fixed annual funding in the range of \$30,000 - \$60,000 annually. For major facilities projects (like City Hall renovations or a new Police/Court building), the BIMC 3.80.020(D) identifies a process through which Council can also consider making an additional, one-time allocation as part of the planning for the facility and decisions about the placement and type of public art, integrated art elements, etc..

If additional project-specific expenditures were anticipated for major facilities, an annual allocation the lower end of the range may be appropriate. If the City's intent was, instead, to use annual allocations to accumulate a fund balance over time – in a sense, to “save up” for larger public art projects – then an annual allocation at the higher end of the range may be appropriate. During budget development for the City's next biennial budget (2019-20), the City Council could establish an appropriate amount of annual funding for the Public Art Program for 2019 and 2020.

When a fixed funding option was discussed in 2015, members of the Public Art Committee (PAC) expressed their preference for a percentage mechanism rather than a fixed amount. If the City wishes to reconsider a fixed funding mechanism, it will be important to discuss this topic with the PAC members, and to determine whether they have ongoing concerns. In late November, the Ad Hoc Committee met with representatives of Arts and Humanities Bainbridge (AHB) and the PAC Chair to present this proposed approach and to solicit feedback.

# PUBLIC ART COMMITTEE (PAC)



August 2018

# PAC'S PROPOSAL FOR PUBLIC ART

COBI consider and approve the following:

1. A Consistent Funding Model for COBI's Public Art Program supports:
  - ▶ Planned Buying / Leasing Public Art
  - ▶ Annual Maintenance, Restoration and Decommissioning of existing public art
  - ▶ Long term program and acquisition planning
  - ▶ Administrative support for the Public Art Committee
2. PAC's proposed next steps for "Something New"

# HOW COBI AND PAC WORK TOGETHER



# WHY SUPPORT OF PAC?

- ▶ COBI and the Community on Bainbridge Island have a long history of supporting public art, (BIMC 3.080.010)

*“It is the policy of the city to further the inclusion of art in public places in the city in order to better enhance the spirit and sensibilities of its citizens.”*

(Ord. 96-48 § 1, 1996; Ord. 96-23 § 1, 1996; Ord. 92-30 § 1, 1992)

*and*

- ▶ Public Art is identified in Goal Cul 5 of the Cultural Element of the Comprehensive Plan (adopted in 1998 and updated in 2016)

*“Create a stimulating visual environment by promoting public arts and providing stewardship for the city’s public art portfolio.”*

# ADMINISTRATIVE SUPPORT OF PAC

## What does PAC do?

- ▶ Create and implement New Public Art Programs, e.g. *Something New*
- ▶ Initiate art projects and acquisitions as approved by City Council, e.g. *Tribute Baskets in Waypoint Park*
- ▶ Coordinate design and implementation of art installations
- ▶ Liaison with over 23 artists with existing installed public art pieces
- ▶ Plan, manage and advise for restoration, preservation, maintenance and / or decommissioning of public art within the existing permanent public art portfolio. PAC currently has 8 members who are supported by AHB staff and meets monthly at AHB's offices
- ▶ Facilitate public / private funding partnerships

See appendix for addition information.

# PUBLIC ART FUNDING HISTORY

Funding Year	PAC Fund Balance (beg balance)	Contributions from COBI	Project Expenditures	Administrative Compensation
2010	\$ 267,108	\$ 0	\$ 44,415	\$ 17,748
2011	\$ 208,493	\$ 0	\$ 51,945	\$ 16,000
2012	\$ 155,111	\$ 0	\$ 2,700	\$ 0
2013	\$ 161,512	\$ 0	\$ 0	\$ 0
2014	\$ 166,364	\$ 0	\$ 18,887	\$ 16,065
2015	\$ 133,552	\$ 7,996	\$ 13,881	\$ 23,352
2016	\$ 104,316	\$ 18,622	\$ 24,690	\$ 6,000 *
2017	\$ 100,073	\$ 45,500	\$ 22,680	\$ 24,000 **
2018	\$ 79,862	TBD	\$ 9,759	\$ 0
2019	TBD	TBD	\$ 25,280	TBD

\* Administrative Compensation funded through COBI General Operating Fund

\*\* 2017 Administrative Comp included Cultural Element Support and PAC Administration

Complete History for Public Art Funding, 1999 – present included in appendix.

# THE PUBLIC ART COMMITTEE

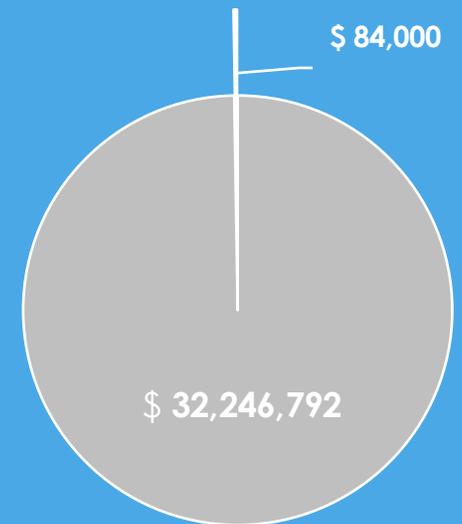
## PROPOSED FUNDING MODEL

Funding Category	Funding Details	Initial Annual Allocation
Capital Project Art Fund**	New Art Acquisition e.g. "Something New" & Tribute Baskets (Waypoint Park)	\$50,000 (minimum)
Existing Portfolio Maintenance / Decommissioning*	Restoration Recommendations and Decommission plans e.g. Gayle Bard Topiary	\$10,000
PAC Administration*	PAC Committee Work <ul style="list-style-type: none"> <li>• Program Administration</li> <li>• Advisory &amp; Preservation Services</li> <li>• Project Management</li> </ul>	\$24,000
<b>Total Requested Annual Allocation</b>		<b>\$84,000</b>

\* General Fund Support

\*\* To be adjusted for future CPI

### COBI General Fund and PAC Funding



■ COBI General Operating Fund

■ Public Art Funding

7

# NEXT STEPS FOR PUBLIC ART

- ▶ “Something New” - Phase Two
- ▶ Long Term Plan: 20 year community Public Art Plan
- ▶ Continue COBI staff as a key liaison to PAC
- ▶ ADD a City Council member as liaison to the committee
- ▶ Quarterly PAC update to City Council



To: City of Bainbridge Island City Council Members  
From: Public Art Committee (PAC)  
Re: Public Art Committee Background for presentation to City Council

### **Purpose:**

The purpose of this document is to provide the Bainbridge Island City Council members with some core information about the Public Art Committee, its history, what it does and how it has historically been funded. This is a supplement to the presentation we will be making at the City Council meeting.

### **Background**

#### **Historical Support for Public Art**

COBI and the community on Bainbridge Island have a long history of supporting public art. It is included in the Bainbridge Island's Municipal Code (BIMC 3.080.010).

*"It is the policy of the city to further the inclusion of art in public places in the city in order to better enhance the spirit and sensibilities of its citizens."*

#### **Public Art is identified in Goal CUL 5 of the Cultural Element of the City of Bainbridge Island's Comprehensive Plan, adopted by COBI in 1998 and later updated in 2016.**

*"Create a stimulating visual environment by promoting public arts and providing stewardship for the city's public art portfolio."*

#### **The Public Art Committee and its Governance**

- ▶ The Public Art Committee (PAC) is a volunteer committee of members.
- ▶ Its members are dedicated to enhancing Bainbridge Island's public spaces by curating new pieces and being the stewards of COBI's public art portfolio.
- ▶ PAC recruits, nominates, interviews and selects new potential members by a vote of the current PAC membership for recommendation to Arts & Humanities Bainbridge (AHB).
- ▶ Recommended members, are approved by the AHB board by majority vote.
- ▶ PAC members identify and consider new public art projects, programs or acquisitions. If a project or proposal is approved by PAC a presentation and proposal is made to the City Council for public community discussion. Following

the discussion, the City Council can approve or deny the project, program or acquisition.

- ▶ Once approved, PAC provides the project leadership in collaboration with COBI including; liaison with artist(s), identification of location(s), design consultation, maintenance of archival information for artist agreements and maintenance plans, public relations, marketing and event planning and management for the artist and installations.
- ▶ Advise the City on maintenance of the existing permanent portfolio.
- ▶ PAC currently has 8 members and meets monthly at AHB's office.

**PAC Recommends the following:**

**Public / Private Partnership for Managing Public Art**

Communities around the country operate with Public / Private Partnership models for managing public art portfolios. Some of the activities this allows include:

- Acceptance of cash and in-kind donations
- Acceptance of art for immediate resale (non-municipal process)
- Selection process without the requirement of public meetings
- Opportunities for independent funding for Public Art, leveraging public commitments

**Historical Perspective**

Arts & Humanities Bainbridge, formerly Bainbridge Island Arts and Humanities Council, was designated as the official body of the City empowered to act on all matters pertaining to the implementation of the goals and policies of the Cultural Element of the Bainbridge Island Comprehensive Plan in 1992. Since that time, AHB has continued to act as the administrative support for PAC.

AHB supports PAC and COBI's Public Art Program by providing the following scope of services. This is a highly collaborative effort that includes COBI City Council, City Staff, PAC members, News Media, Artists, Various Contractors and Vendors in support of the Bainbridge Island Public Art Program.

## **SCOPE OF SERVICES**

**Provided by PAC and supported by AHB Administration:**

### **1. Program Administration:**

Create and innovate new public art programs. Initiate art projects and acquisitions, research and advise on site selection and artists, oversight of jury selections, financial monitoring, public art inquiries, advocacy and community engagement activities.

### **2. Advisory Services:**

Plan, manage and advise for restoration, preservation, maintenance and / or decommissioning of public art within the existing public art portfolio. Review and coordinate on key policy topics, supporting City's annual budget development, provide work plans and timelines annually for ongoing and upcoming public art projects.

### **3. Preservation Management:**

Liaison with over 25 artists with existing installed public art pieces. Review and collaborate with artists on needed preservation or decommission plans to provide recommendations to COBI.

### **4. Project Management:**

Oversee the design and implementation of art installations. Partner with COBI, where the City staff provides construction and engineering support, to complete artist contracts, site selection and logistics, monitor progress, timelines, and project budgets, communicate with artists and manage publicity events for new projects.

## **A SEPARATE PUBLIC ART FUND ACCOUNT**

Today the Public Art Program is funded through the general fund. A periodic contribution is made to the fund. The fund contribution is determined by calculating 2% of COBI's construction expenses for projects approved in the City's Capital Improvement Plan (CIP).

This fund is managed and administered by COBI. It is used to pay for specific project expenses, including selection, installation, regular maintenance and major restoration of the actual artwork.

AS it exists today, **PAC's work, including project support and execution, is NOT funded through this mechanism.**

## **PAC Administrative Support**

The following services describe the work performed by AHB staff and are needed for the management and to support the work of the Public Art Committee:

### **Coordinate programs:**

Prepare meeting agendas, record and distribute meeting minutes, conduct public art research, and coordinate ongoing PAC program project requests

### **Public Communication:**

Create and publish marketing and promotional communications, coordinate with City staff regarding press releases, maintain PAC web page on AHB site, collaborate with development and maintenance of COBI's Public Art Program site, and update social media with PAC activities

### **Administration:**

Coordinate with PAC Chair in leadership to committee members, provide oversight of PAC financials, ongoing work plans, timelines and PAC's advocacy and community involvement activities

### **Event Planning**

Plan, coordinate and execute publicity and promotional events for new public art celebrations and for ongoing appreciation of PAC and public art support

### **Other Public Fund Raising and Gift Coordination**

Meet and collaborate with private donors to create funding opportunities in support of public art projects and coordinate with local service contractors for in-kind time and material donations

## **PROPOSAL FOR CONSISTENT AND LONG TERM COMMITMENT TO PUBLIC ART**

- **PAC recommends COBI make a 5-year commitment beginning now to fund art work purchases and leases; maintenance and restoration and administrative support of the work of PAC.**
- **PAC recommends that the administration support continue with Arts & Humanities Bainbridge (AHB).**

### **Commitment for the following:**

- **\$10,000 to the Art Fund for restoration**
- **\$50,000 to the Art Fund for new purchases and or leases**
- **\$24,000 for PAC support services via AHB or PAC**

**Totaling \$84,000 per year with an annual regional cost escalator for administration (or tie it to COBI average wage increases as a %)**

## **Next Steps for the Public Art Committee**

### **The “Something New” Project**

**Background:** The “Something New” concept was introduced to the City Council by members of the Public Art Committee in February 2017. The City Council approved Phase One of the project which included gathering public input from the community through outreach meetings.

Three community outreach events were held in April and May of 2017: one at City Hall, one at Bainbridge Island Downtown Association (BIDA) meeting, and on the Washington State Ferries during two peak commuter ferry crossing. Data were gathered and compiled.

PAC reviewed the suggested locations and proposed the three top selected and three alternate locations, along with a proposed budget and timeline to City Council for consideration and approval. In September 2017, approval from City Council to proceed with the project was granted.

The “Call for Art” was posted in February 2018. A jury was chosen to make the artwork selections. Selections were reviewed by the jury and three sculptures were chosen on March 31st. Artists were notified in April. PAC has worked with COBI Public Works to engineer and build the pedestals for each of the three locations.

PAC provided City Staff with the selected art and artist information to complete agreements with COBI. PAC presented the chosen sculptures to City Council in May 2018 along with a slightly revised installation timeline and plans for exhibition opening events and celebration.

### **The “Something New” Celebrations:**

During the July First Friday Art Walk, PAC hosted the Unveiling Celebration of “Something New” sculptures and the artists with a tent, located along Winslow Way, a shuttle circulating between the three sculpture locations and Mora ice cream! A map of the public art housed within the Winslow corridor, including the three new locations and an updated public art brochure were available to the public to promote the program and its accomplishments.

### **Other PAC Projects**

In addition to the work relating to the Something New project, PAC continues to work on management of the public art portfolio, including maintenance and preservation of existing artwork and consolidation of documentation. PAC advises the City Staff on repairs and potential maintenance of portfolio pieces as well as identifying new and exciting opportunities for future projects.

# APPENDIX

- ▶ Public Art Portfolio
- ▶ AHB and the Public Art Committee History
- ▶ PAC Funding History (1999 – present)
- ▶ COBI Public Art Works Account Activity
- ▶ Other Cities' Public Art Program Funding Survey
- ▶ Time and work log for PAC administrative support by AHB

# THE PUBLIC ART PORTFOLIO

From PAC's first project in 1990, the "Rainbringer" by Craig Jacobbrown to this year's project "Something New" in Downtown Winslow

Please visit the COBI Public Art Site for a complete viewing



# AHB AND THE PUBLIC ART COMMITTEE

- ▶ AHB, formerly Bainbridge Island Arts and Humanities Council, was designated as the official body of the City empowered to act on all matters pertaining to the implementation of the goals and policies of the Cultural Element of the Bainbridge Island Comprehensive Plan in 1992.
- ▶ For 26 years, AHB has continued to act as the administering agency for PAC, and works collaboratively with City Staff to support the City's program.

## HISTORY OF PUBLIC ART FUNDING BY THE YEAR

*Note: Annual allocations come into the Public Art Fund during the 2<sup>nd</sup> or 3<sup>rd</sup> quarter of the following year. Allocations are based on a percent (originally 1%, now 2%) of qualifying portions of the year's capital projects. The dollars come from the COBI General Fund (rather than the capital projects budgets).*

1999	\$72,055 (City Hall construction 1% for art dollars)
2000	\$22,207
2001	\$18,850 (+\$9,313 interest)
2002	\$16,251 (+\$4,085 interest)
2003	\$26,971 (+\$3,545 interest)
2004	\$24,369 (+\$2,815 interest)
2005	\$23,862 (+\$4,311 interest)
2006	\$33,871 (\$6,069 interest)
2007	\$61,194 (+\$6,826 interest)

Note: On November 28, 2007, City Council approved by a vote of 3-2 to increase the annual allocation to the public art fund from 1% to 2% of capital projects, with existing exclusions.

2008	\$180,706 (+\$2,502 interest) (Waste Water Treatment Plant 2% dollars)
2009:	0

Note: March 25, 2009, City Council approved a Motion to suspend access to 2008 and 2009 allocations to the Public Art Fund until January 1, 2011, with approved exceptions. See Motion.

2010	0
2011	0
2012	0
2013	0
2014	0
2015	\$7,358.80 (+\$637.58 interest)
2016	\$18,039.70 (+\$583.07 interest)
2017	\$ 45,500

Note: \$31K Waterfront Park, 11K Wardwell Road, \$2,500 Manitou Beach, 1K Waypoint

## Public Art Works Account Activity

Item	Date	Credit	Debit	Balance
Beginning Balance	01-Jan-01			\$132,615.07
1 % Contribution	31-Dec-01	18,849.83		151,464.90
Interest on 2001 Balance	31-Dec-01	9,313.04		160,777.94
<b>BPA Lease Payment</b>	<b>5/30/01</b>	<b>480.55</b>		<b>161,258.49</b>
Expenses:				
Nakata Pool	07-Jun-01		9,500.00	151,758.49
Nakata Pool	05-Dec-01		17,950.00	133,808.49
1 % Contribution	31-Dec-02	16,250.84		150,059.33
Interest on 2002 Balance	31-Dec-02	4,085.43		154,144.76
<b>BPA Lease Payment</b>	<b>3/18/02</b>	<b>424.41</b>		<b>154,569.17</b>
<b>BPA Lease Payment</b>	<b>8/27/02</b>	<b>291.13</b>		<b>154,860.30</b>
Expenses:				
Nakata Pool	20-Jun-02		11,250.00	143,319.17
Nakata Pool	10-Jul-02		11,100.00	132,219.17
Sidewalk Repair	17-Jul-02		250.00	131,969.17
Sidewalk Repair	06-Aug-02		750.00	131,219.17
Nakata Pool	12-Aug-02		4,200.00	127,019.17
Sidewalk Repair	27-Sep-02		353.55	126,665.62
Gateway Project	31-Dec-02		6,000.00	120,665.62
Ending Balance	31-Dec-02			120,665.62
<b>BPA Lease Payments</b>	<b>3/20/03</b>	<b>309.24</b>		<b>120,974.86</b>
<b>BPA Lease Payment</b>	<b>6/2/03</b>	<b>382.31</b>		<b>120,974.86</b>
Expenses:				

Gateway Project	01-Apr-03		6,000.00	11,174.86
Admin Assessment	06-Mar-03		808.29	114,166.57
Art Garden	30-Apr-03		3,000.00	111,166.57
Art Garden	26-Jun-03		5,000.00	106,166.57
Gateway Project	26-Jun-03		6,000.00	100,166.57
Art Garden	10-Oct-03		1,999.00	98,167.57
Gateway Project	27-Oct-03		6,000.00	92,167.57
Public Art - Admin Asst.	03-Dec-03		4,156.38	88,011.19
1 % Contribution	31-Dec-03	26,971.18		114,982.37
Interest on 2003 Balance	31-Dec-03	3,545.92		118,528.29
Beginning 2004 Balance	01-Jan-04			\$118,528.29
BPA Lease Payments (9/03 - 12/03)	2/6/04	331.08		
BPA Lease Payment	12/6/04	900.96		119,760.33
Expenses:				
Administration	09-Jul-04		3,419.85	116,340.48
Administration	18-Oct-04		1,921.00	114,419.48
Administration	15-Dec-04		2,868.87	111,550.61
1 % Contribution				111,550.61
Interest on 2004 Balance		2,815.02		114,365.62
1 % Contribution	02-Jan-05	24,369.25		138,734.87
Beginning 2005 Balance	01-Jan-05			\$138,734.87
BPA Lease Payment			0.00	138,734.87
Expenses:				
An Island Portrait	21-Apr-05		5,400.00	133,334.87

**Public Art Works Account Activity**

Item	Date	Credit	Debit	Balance
Administration	22-Apr-05		2,543.24	13,773.61
Pritchard Park	31-May-05		4,750.00	126,041.63
BI Poetry Project	02-Jun-05		6,000.00	120,041.63
2005 Pub Art Project	16-Jun-05		14,750.00	105,291.63
Administration	04-Aug-05		3,649.23	101,642.40
Administration	02-Nov-05		2,739.70	98,902.70
1 % Contribution	31-Dec-05	23,862.69		122,765.39
Interest on 2005 Balance		4,311.75		127,077.14
Beginning 2006 Balance	01-Jan-06			127,077.14
BPA Lease Payment	9/11/06	100.00		127,177.14
BPA Lease Payment	12/21/06	1,985.94		129,163.08
Expenses:				
Administration	20-Apr-06		2,339.44	126,823.64
Administration	05-Sep-06		4,069.26	122,754.38
Waterfront Park Pub. Art	06-Sep-06		12,882.75	109,871.63
Administration	01-Nov-06		6,181.62	103,690.01
Administration	21-Feb-07		7,476.43	96,213.58
1 % Contribution	31-Dec-06	33,873.61		130,087.19
Interest on 2006 Balance		6,069.08		136,156.27
Beginning 2007 Balance	01-Jan-07			136,156.27
BPA Lease Payment	9/19/07	779.88		136,936.15

## Expenses:

Administration	08-Jun-07	6,669.94	130,266.21
Administration	03-Aug-07	4,615.01	125,651.20
Administration	03-Jan-08	3,684.00	121,967.20
Administration	21-Feb-08	6,234.84	115,732.36
Winslow Way Pub. Art	31-Dec-07	42,250.00	73,482.36

## 1 % Contribution

	31-Dec-07	61,194.28	134,676.64
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## Interest on 2007 Balance

		6,826.00	141,502.64
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## Beginning 2008 Balance

	01-Jan-08		141,502.64
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## BPA Lease Payment

		0.00	141,502.64
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## Expenses:

Administration - 1st qtr	20-May-08	2,284.02	139,218.62
Administration - 2nd qtr	02-Jul-08	2,008.51	137,210.11
Administration - 3rd qtr	15-Oct-08	3,258.00	133,952.11
Administration - 4th qtr	31-Dec-08	7,103.14	126,848.97

## 2 % Contribution

	31-Dec-08	N/A - to be posted in Spring 2009	126,848.97
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## Interest on 2008 Balance

		2,502.22	129,351.19
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## Beginning 2009 Balance

	14-May-09		129,351.19
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## 2 % Contribution (from 2008)

	31-May-09	180,706.93	310,058.12
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## Insurance recovery-Rainbringer

	30-Sep-09	8,000.00	318,058.12
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## BPA Lease Payment

	12/16/09	1,302.76	319,360.88
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## Expenses:

Admin-Wages - 1st qtr	14-May-09	6,050.00	313,310.88
Ferry Walkway adm & other adm	14-May-09	3,814.11	309,496.77
W. Way Artists panel & other adm	25-Jun-09	5,597.24	303,899.53

Tracing the Depths - final concept	19-Jul-09	2,000.00	30,139.53
Admin-Wages & others for above	19-Jul-09	740.72	301,158.81
Admin-Wages - 2nd qtr	09-Aug-09	4,950.00	296,208.81
Tracing the Depths-Ferry walkway	20-Sep-09	5,000.00	291,208.81
Tracing the Depths-Ferry walkway	20-Sep-09	2,000.00	289,208.81
Tracing the Depths-Ferry walkway	20-Sep-09	5,000.00	284,208.81
Winslow Way Art Concept	10/11/09	3,000.00	281,208.81
Winslow Way Art Concept	10/25/09	2,000.00	279,208.81
Ferry Walkway adm & other adm	11/22/09	1,279.86	277,928.95
Winslow Way Art-Myers Sculpture	11/22/09	1,600.00	276,328.95
Admin-Wages - 3rd qtr	11/22/09	3,474.40	272,854.55
Tracing the Depths-Ferry walkway	11/22/09	1,000.00	271,854.55
W. Way art adm	12/20/09	1,369.15	270,485.40
Winslow Way Art Concept	12/31/09	600.00	269,885.40
Admin-Wages - 4th qtr	12/31/09	4,950.00	264,935.40
Public Art projects adm	12/31/09	392.16	264,543.24
Interest on 2009 Balance		2,564.63	267,107.87
<b>YE 2009 balance</b>	12/31/09		<b>267,107.87</b>

Beginning 2010 Balance 1/1/10 267,107.87

**BPA Lease Payment 0.00**

Expenses:

Admin-Wages - 1st qtr	4/30/10	5,027.25	262,080.62
Devin Johnson - Creative Grounds	5/5/10	4,140.46	257,940.16
Project specific support	7/7/10	238.04	257,702.12
Project specific support	8/4/10	85.96	257,616.16
Project specific support	8/4/10	145.47	257,470.69
Admin-Wages - 2nd qtr	8/4/10	2,769.01	254,701.68
Devin Johnson - Creative Grounds	9/30/10	1,727.03	252,974.65
Public Art - Madison Plaza	10/20/10	25,000.00	227,974.65
Devin Johnson - Creative Grounds	10/20/10	1,987.04	225,987.61

Devin Johnson - Creative Grounds	10/20/10		145.46	222,542.15
Admin-Wages - 3rd qtr	10/31/10		3,435.00	222,407.15
Craig Jacobbrown - Rainbringer	12/19/10		9,000.00	213,407.15
Admin-Wages - 4th qtr	12/31/10		6,516.41	206,890.74
Tollefson - Lower Madison	12/31/10		1,946.24	204,944.50

Interest Income	12/31/10		2,548.82	207,493.32
Ins. deductible recovery-Rainbringer	6/23/10		1,000.00	208,493.32

**YE 2010 balance** 12/31/10 **208,493.32**

Beginning 2011 Balance 1/1/11 208,493.32

<b>BPA Lease Pymt - Sept/09 to Aug/10</b>	<b>1/24/11</b>	<b>1,113.46</b>		<b>209,606.78</b>
BlAHC-NEA grant	11/17/11	12,000.00		221,606.78
Interest Income	12/31/11	1,449.56		223,056.34

Expenses:

Myers Sculpture-WW Art concept/design	2/28/11		800.00	222,256.34
Myers Sculpture-WW Art installation	4/30/11		4,000.00	218,256.34
BlAHC-2011 1st quarter public art support	4/30/11		4,000.00	214,256.34
Myers Sculpture-WW Art installation	6/16/11		17,144.90	197,111.44
Myers Sculpture-WW Art installation	7/31/11		14,000.00	183,111.44
BlAHC-2011 2nd quarter public art support	9/18/11		4,000.00	179,111.44
BlAHC-2011 3rd quarter public art support	10/31/11		4,000.00	175,111.44
Myers Sculpture-WW Art installation	11/23/11		10,700.00	164,411.44
BlAHC-2011 4th quarter public art support	12/31/11		4,000.00	160,411.44
Myers Sculpture-WW Art installation	12/31/11		3,300.00	157,111.44
Myers Sculpture-WW Art installation	12/31/11		2,000.00	155,111.44

**YE 2011 balance** 12/31/11 **155,111.44**

Beginning 2012 Balance 1/1/12 155,111.44

<b>BPA Lease Pymt</b>		<b>0.00</b>		<b>155,111.44</b>
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BIAHC-NEA grant 1/20/12 8,000.00 167,111.44  
 Interest Income 12/31/12 1,100.24 164,211.68

Expenses:  
 Myers Sculpture-WW Art installation 5/31/12 2,700.00 161,511.68

**YE 2012 balance** 12/31/12 **161,511.68**

Beginning 2013 Balance 1/1/13 161,511.68

BPA Lease Pymt 9/2010 - 9/2011 9/25/13 1,333.93 162,845.61

BPA Lease Pymt 9/2011 - 9/2012 9/25/13 1,293.76 164,139.37

BPA Lease Pymt 9/2012 - 9/2013 9/25/13 1,468.73 165,608.10

Interest Income 12/31/13 756.12 166,364.22

**YE 2013 balance** 12/31/13 **166,364.22**

Beginning 2014 Balance 1/1/14 166,364.22

Revenue:  
 BPA Lease Pymt 2013 - 2014 9/9/14 1,395.66 167,759.88

Expenses:  
 BIAHC - Public Art Management Fees 8/31/14 6,000.00 161,759.88

BIAHC - Public Art Management Fees 10/31/14 6,000.00 155,759.88

POD sculpture remediation 11/30/14 8,886.97 146,872.91

BIAHC - Public Art Management Fees 12/31/14 4,064.72 142,808.19

Artech - Public Art Maintenance 12/31/14 10,000.00 132,808.19

Interest Income 12/31/14 744.27 133,552.46

**YE 2014 balance** 12/31/14 **133,552.46**

Beginning 2015 Balance 1/1/15 133,552.46

Expenses:

BIAHC - Q1 Public Art Management Fees	4/30/15		6,000.00	127,552.46
BIAHC - Public Art software license fee	5/31/15		525.00	127,027.46
BIAHC - Waypoint Park	5/31/15		182.52	126,844.94
BIAHC - Q2 Public Art Management Fees	8/11/15		6,000.00	120,844.94
Fluid Concrete - Pod Pedestal	8/20/15		4,386.00	116,458.94
MD Electronics - Supply power to Pod	8/31/15		820.00	115,638.94
Artech, Inc. - Erin Shae Bronze Inlay repair	9/11/15		1,420.00	114,218.94
BIAHC - Q3 Public Art Management Fees	10/21/15		6,027.18	108,191.76
Artech, Inc. - Erin Shae Bronze Inlay repair	12/16/15		2,260.96	105,930.80
BIAHC - Pod expenses	12/16/15		811.03	105,119.77
Kristin Tollefson - Purchase of the Pod	12/16/15		4,000.00	101,119.77
BIAHC - Q4 Public Art Management Fees	12/21/15		4,800.00	96,319.77

Interest Income

2015 2% for the Arts contribution

	12/31/15		637.58	96,957.34
	12/31/15		7,358.80	104,316.14

**YE 2015 balance**

	<b>12/31/15</b>			<b>104,316.14</b>
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Beginning 2016 Balance

Date	Credit	Debit	Balance
			104,316.14

Revenue:

BPA Lease Pymt 2015

	2/1/16	1,823.81		106,139.95
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Expenses:

Fluid Concrete & Design - Clean CH Plaque	2/8/16		1,589.74	104,550.21
Christine Clark - Waypoint Art, 1st payment	5/16/16		1,500.00	103,050.21
Christine Clark - Waypoint Art, 2nd payment	7/8/16		9,000.00	94,050.21
Christine Clark - Waypoint Art, 3rd payment	10/27/16		12,600.00	81,450.21

Interest Income 45  
 12/31/16 583.07 8,133.28

2016 2% for the Arts contribution  
 12/31/16 18,039.70 100,072.98

**YE 2016 balance** **12/31/16** **100,072.98**

Beginning 2017 Balance **Balance** 100,072.98

Revenue:

BPA Lease Pymt (from 10/24/2016) for 2016 1/2/17 1,972.31 102,045.29

Expenses:

Christine Clark - Waypoint Art, 4th payment 3/21/17 12,600.00 89,445.29

Arts & Humanities Bainbridge - public art admin fee - Q4 2016 3/14/17 - 89,445.29

Christine Clark - Waypoint excise tax 5/10/17 6,300.00 83,145.29

WA ST Dept. of Rev. 5/26/17 1,134.00 82,011.29

WA ST Dept. of Rev. 5/26/17 1,134.00 80,877.29

WA ST Dept. of Rev. 5/26/17 810.00 80,067.29

WA ST Dept. of Rev. 5/26/17 135.00 79,932.29

WA ST Dept. of Rev. 8/1/17 567.00 79,365.29

Interest Income 8/31/17 497.29 79,862.58

**Public Art Funding Survey, as of 8.3.18**

<i>City</i>	<i>Total Budget 2018 (tax supported and utility funds)</i>	<i>Stated Funding Policy- From On-line budget documents, CAFR, newspaper</i>	<i>Email and Phone Inquiry Sent to Mayors or Arts Org Staff member</i>	<i>Notes</i>
Bellevue, WA	\$1,513,000,000	Ordinance: Annual funding \$350k. Separate Capital Project, Capital Investment Average annual project expenditures are \$80k	Y	1 ½ FTE Costs in excess of \$90k require Council approval. City Municipal Art Fund: City Program administers Arts fund in collaboration with Arts Commission
Bellingham, WA	\$102,698,000	Paid from Capital Projects, with funding paid for project by project.  Example: 3 projects initiated in 2015, completed in 2018-Total Cost \$325k	Y, with Reply	Staff in the Planning and Community Development Department administer with the direction from the Arts Commission and final approval by the Mayor
Coupeville, WA  Edmonds, WA (1)	\$632,000  GF \$40,000,000 Capital and other (\$59,000,000)	Each year, \$75k-\$100k is a budget goal. There is an ordinance that requires 1% of Capital Expenditures for public art acquisition and implementation, supplemented if available with contributions, and Arts Commission funds.	Y, with reply	Operating Budget Only.  A Cultural Svcs. Mgr and a Program assistant are dedicated to all arts related. They also staff the Arts Commission, who assist with the PA program. Arts Commission-5, Staff 2 (1)Revenue-2017 46% Earned Income 11% Contributed / Donations 11% General fund 28% Lodging Tax Funds 4% Public Art* *Revenue for Public Art varies from year to year, depending on eligible City construction projects and private donations. Expenses 49% Events and Programs* 5% Supplies and Equipment 40% Marketing 6% Public Art *Staffing for the Arts Office is through Parks, Recreation and Cultural

**Public Art Funding Survey, as of 8.3.18**

<i>City</i>	<i>Total Budget 2018 (tax supported and utility funds)</i>	<i>Stated Funding Policy- From On-line budget documents, CAFR, newspaper</i>	<i>Email and Phone Inquiry Sent to Mayors or Arts Org Staff member</i>	<i>Notes</i>
Maple Valley, WA	\$24,338,000	Ordinance: .25 per each City resident and up to 1% of project construction		
Mercer Island, WA	\$63,900,000	1% for the Arts-\$15k; City Arts Mtee-\$5k	Y	Arts Council (Parks and Rec) (Grouped with Recreation and Special Programs)
Port Townsend, WA	\$45,600,000	2018 Arts Commission Budget\$24,600(for grants to fund art events) 1 % of CIP for Arts that is discretionary and recently has not been added to budget	Y	Administered by a Committee under the Arts Commission, with staffing from Public Works. <a href="http://cityofpt.us/ptarts/">http://cityofpt.us/ptarts/</a>
Redmond, WA	\$680,000,000	Ordinance:1% of CIP projects greater than \$100k		
Renton, WA	\$476,000,000	Ordinance: 1% of CIP		
City of Shoreline	\$79,938,000	Ordinance: PA Fund is equal to 1% of Annual Capital Construction. For 2018, with a \$296k Beginning Fund Balance, \$195k use of funds, with \$140k for project costs and \$55k for Personnel (9%) and Other Services(15%)		Six year Plan The Shoreline-Lake Forest Commission .5 FTE-\$25.5k Annually from PA Fund and \$25.5k from General Fund Annual CIP funding not consistently shown; Last large transfer into PA fund was in 2016, \$213k. Other years use of fund balance only. <a href="http://www.shorelinewa.gov/home/showdocument?id=30225">http://www.shorelinewa.gov/home/showdocument?id=30225</a>
COBI	\$52,574,000	2% of eligible Capital Costs, private contributions through PAC/AHB		

**Public Art Funding Survey, as of 8.3.18**

<i>City</i>	<i>Total Budget 2018 (tax supported and utility funds)</i>	<i>Stated Funding Policy- From On-line budget documents, CAFR, newspaper</i>	<i>Email and Phone Inquiry Sent to Mayors or Arts Org Staff member</i>	<i>Notes</i>
WA State				<p><b>WAC 30-40-050 Funding.</b></p> <p>(1) Calculation of funds.</p> <p>(a) Pursuant to RCW 43.46.090 through 43.46.095, one-half of one percent of the state's capital appropriation for the original construction of specific public buildings is set aside for the administration, acquisition, and conservation of works of art for the state art collection.</p>

PAC Administrative Support (AHB)  
January – July 2018

<b>January</b>	<b>Activity Category</b>	<b>Specific Tasks</b>	<b>AHB Staff Hours</b>	<b>PAC / AHB Board / Volunteer Hours</b>
1/2 – 1/6	COBI Funding Prep Meeting	Discuss and draft proposal documents	3	6
1/8 – 1/12	Prep for PAC meeting	Collect agenda items, prepare agenda and meeting documents	8	6
	Convene PAC meeting	Manage monthly meeting, recording and distribution of materials	4	18
	PAC donor thank you dinner	Plan event, purchase food, invite PAC donors, host dinner for PAC donors and committee	10	38
1/22 – 1/26	Mtg with City Council member	Introduce AHB and PAC to new Council member	4	12
1/29 – 1/31	Interview potential PAC candidate	Take candidate to lunch to introduce public art committee work and commitments	2	0
	Program Administration (monthly)	Research Call for Art – communications, artist trust site, art department communications with local universities, review / research commission agreement for artwork, communication with Chair & ED	40	0
	PAC Communication (monthly)	Research digital Call for Art options	12	0
<b>January Total</b>			<b>83</b>	<b>80</b>
<b>February</b>	<b>Activity Category</b>	<b>Specific Tasks</b>	<b>AHB Staff Hours</b>	<b>PAC / AHB Board / Volunteer Hours</b>
2/1 – 2/2	Meet with PAC Candidate	Coffee with potential new PAC member	2	0
	Prep for PAC meeting	Collect agenda items, prepare agenda and meeting documents,	6	6
2/5 – 2/9	Meet with City Staff	Attend meeting at City Hall to discuss PAC Funding proposal	2	6
	Convene PAC meeting	Manage monthly meeting, recording and distribution of materials	6	20
	Meet with PAC members and advisors	Meet to discuss PAC administration funding	2	6

2/12 – 2/16	Meeting with AHB Staff re: PAC	Hold video conf meeting between AHB staff & ED	6	0
	Program Administration (monthly)	Communication with Chair & ED, Update and distribute PAC materials, prepare PAC notebooks for new members	40	5
	PAC Communication (monthly)	Research and prepare Call for Art, prepare press releases, communicate with PAC members	20	2
<b>February Total</b>			<b>84</b>	<b>45</b>
<b>March</b>	<b>Activity Category</b>	<b>Specific Tasks</b>	<b>AHB Staff Hours</b>	<b>PAC / AHB Board / Volunteer Hours</b>
3/1 – 3/8	Prep for PAC meeting	Collect agenda items, prepare agenda and meeting documents	8	4
	Convene PAC Meeting	Manage monthly meeting, recording and distribution of materials	7	14
3/11 – 3/15	Meeting with AHB Staff re: PAC	Hold video conf meeting between AHB staff and ED	6	0
	Program Administration (monthly)	Communication with Chair & ED, Update and distribute PAC materials, prepare PAC notebooks for new members, Something New Call for Art Status reporting and jury coordination	40	5
	PAC Communication (monthly)	Manage Call for Art, prepare press releases	25	0
<b>March Total</b>			<b>86</b>	<b>23</b>
<b>April</b>	<b>Activity Category</b>	<b>Specific Tasks</b>	<b>AHB Staff Hours</b>	<b>PAC / AHB Board / Volunteer Hours</b>
4/2 – 4/6	Prep for PAC meeting	Collect agenda items, prepare agenda and meeting documents	8	4
	Convene PAC Meeting	Manage monthly meeting, recording and distribution of materials	7	14
4/9 – 4/13	Meeting with AHB Staff re: PAC	Hold video conf meeting between AHB staff and ED	6	0
	Program Administration (monthly)	Communication with Chair & ED, Provide Something New updates, timeline changes to PAC, Research update pedestal change requests for chosen artwork, Provide final contact info for artists to PAC, Research and review Bard Topiary deaccessioning for PAC members	40	10

	PAC Communication (monthly)	Communicate with artists and PAC members, collect materials for Something New promotion	12	0
<b>April Total</b>			<b>73</b>	<b>28</b>
<b>May</b>	<b>Activity Category</b>	<b>Specific Tasks</b>	<b>AHB Staff Hours</b>	<b>PAC / AHB Board / Volunteer Hours</b>
5/1 – 5/4	Prep for PAC meeting	Collect agenda items, prepare agenda and meeting documents	8	4
	Convene PAC Meeting	Manage monthly meeting, recording and distribution of materials	7	14
5/7 – 5/11	PAC project meeting	Meeting with AHB staff and PAC Chair	3	6
	Meeting with COBI Communications Staff	Meeting re: Something New promotions and marketing	2	2
5/15 – 5/19	PAC project meeting	Something New activities: plan for official unveiling celebration for Something New, monitor and photograph installations for publicity	5	5
	Something New sculpture installations	Meet with Public Works and sculptors for installations - photos and notes	6	6
	Program Administration (monthly)	Plan and orchestrate participation in COBI Waterfront Park Dock celebration “sneak preview” (including waterfront sculpture installation and podcast with artist), research funding allocation history for PAC	40	5
	PAC Communication (monthly)	Prepare Something New promotional materials and press releases	15	0
<b>May Total</b>			<b>86</b>	<b>42</b>
<b>June</b>	<b>Activity Category</b>	<b>Specific Tasks</b>	<b>AHB Staff Hours</b>	<b>PAC / AHB Board / Volunteer Hours</b>
6/4 – 6/8	Prep for PAC meeting	Collect agenda items, prepare agenda and meeting documents	8	4
	Convene PAC Meeting	Manage monthly meeting, recording and distribution of materials	7	14
	Meet with new Council Member	Introduce AHB and PAC to new Council member	3	10
	Meet with Advisor re: PAC	Discuss PAC committee structure, funding model and presentation to Council	4	4

	Meet with COBI Communications Coordinator	Introduce AHB and PAC to new COBI Communications Coordinator, share Something New project and PR plans	2	2
	Present Something New Update to City Council	Prepare and present updates re: Something New at City Council meeting	4	4
	Program Administration (monthly)	Coordination / communication with PAC Chair and ED, Set up and execute "Sneak Preview" for Something New, Plan First Friday Art Walk / Something New Unveiling Celebration: coordinate Sweet Deal mobile, COBI Permit, brochure printing and distribution and public outreach, research and communicate plaque options available for sculptures	40	25
	PAC Communication (monthly)	Prepare Something New promotional materials (brochures, flyers, web graphics) and press releases	20	0
<b>June Total</b>			<b>88</b>	<b>63</b>
<b>July</b>	<b>Activity Category</b>	<b>Specific Tasks</b>	<b>AHB Staff Hours</b>	<b>PAC / AHB Board / Volunteer Hours</b>
7/2 – 7/6	Prep for PAC meeting	Collect agenda items, prepare agenda and meeting documents	8	4
7/9 – 7/13	Convene PAC Meeting	Manage monthly meeting, recording and distribution of materials	7	14
	Program Administration (monthly)	Manage First Friday Art Walk / Something New Unveiling Activities: Coordination of logistics and participants for Something New event, Plan for next steps and public outreach for Something New, Set up and execution of July 6th event (tent, table, chairs, banners, ice cream, shuttle, etc.)	40	25
	PAC Communication (monthly)	Design First Friday Art Walk graphic materials, print promotional materials, promote event on social media and AHB website	20	0
<b>July Total</b>			<b>75</b>	<b>43</b>
<b>Total Hours</b>			<b>575</b>	<b>324</b>



CITY OF  
BAINBRIDGE ISLAND

## City Council Study Session Agenda Bill

**MEETING DATE:** September 4, 2018

**ESTIMATED TIME:** 60 Minutes

**AGENDA ITEM:** (8:40 PM) Ordinance No. 2018-19 Planning Commission Recommendations Related to Modifying Chapter 16.18 BIMC, Land Clearing, and BIMC 18.15.010 with Consideration for "Landmark Tree" Regulations - Planning,

**STRATEGIC PRIORITY:** Green, Well-Planned Community

**PRIORITY BASED BUDGETING PROGRAM:**

**AGENDA CATEGORY:** Ordinance

**PROPOSED BY:** Planning & Community Development

**RECOMMENDED MOTION:**

Two Options:

Option 1: Discussion Only. Council could consider scheduling additional discussion on this item for a future council meeting.

Option 2: I move to schedule a public hearing on Ordinance No. 2018-19 and a public hearing on Ordinance No. 2018-32 as part of the agenda for the September 25, 2018 business meeting.

**SUMMARY:**

See attached memorandum.

**FISCAL IMPACT:**

<b>Amount:</b>	
<b>Ongoing Cost:</b>	
<b>One-Time Cost:</b>	
<b>Included in Current Budget?</b>	

**BACKGROUND:** See attached memorandum.

If the City Council desires to proceed with Ordinance No. 2018-19, the next step would be to schedule a public hearing on the ordinance. If a public hearing is scheduled, staff recommends that the City Council also schedules a public hearing on Ordinance No. 2018-32, related to Landmark Trees, which was adopted by the

City Council on August 21, 2018 as an emergency ordinance. Under state law, a public hearing on Ordinance No. 2018-32 must be held within 60 days of adoption. Given that both Ordinance No. 2018-32 and Ordinance No. 2018-19 address the protection of certain trees on Bainbridge Island, it would be beneficial to hold public hearings on both ordinances on the same day.

Attached is the draft of Ordinance No. 2018-19 proposed by the Planning Commission. The City Attorney's Office has not yet had the opportunity to review the draft in depth. Therefore, if the City Council decides to set a public hearing on Ordinance No. 2018-19, the City Attorney's Office anticipates that some revisions to the draft ordinance will be made prior to the public hearing. If a public hearing is set, a revised Ordinance No. 2018-19 will be disseminated as part of the agenda materials for the September 25, 2018 business meeting.

**ATTACHMENTS:**

[CC Staff Memo](#)

[Ordinance No. 2018-19 Tree Regulations.docx](#)

[Exhibit A 2018-19 Ch 16.18](#)

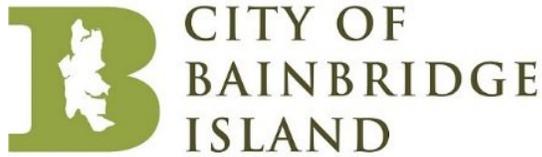
[Ordinance No. 2018-25 Imposing an Interim Official Control related to Landmark Trees](#)

[Ordinance No. 2018-32 Modifying Chapter 16.32 Relating to Landmark Trees-Emergency](#)

**FISCAL DETAILS:**

**Fund Name(s):**

**Coding:**



Department of Planning and Community Development

## Memorandum

Date: September 4, 2018  
To: City Council  
From: Jennifer Sutton, AICP  
Senior Planner  
Subject: Revisions to BIMC Chapter 16.18 Land Clearing and Section 18.15.010 *Landscaping, screening, and tree retention, protection and replacement* & Consider Integration of new Ordinance Nos. 2018-25/ 2018-32 Protection of Landmark Trees

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### I. BACKGROUND

The Tree/LID Ad Hoc Committee is a temporary Council Ad Hoc committee comprised of three Councilmembers and two Planning Commissioners and has been meeting since February 2014 to review the City's tree and landscaping regulations. Currently, Ad Hoc Committee members are:

Councilmember Ron Peltier  
Councilmember Sarah Blossom  
Councilmember Rasham Nassar

Commissioner Jon Quitslund  
Commissioner Mack Pearl

Realizing that reviewing the regulations in their entirety is a large task, the Ad Hoc Committee organized their work by first focusing on tree and landscaping regulations that apply to the Mixed Use Town Center (MUTC) /High School Road (HS) zoning districts (Ordinance 2015-04) and then regulations that applied to developments outside the Winslow Core (Ordinance 2016-01).

The last phase of the Tree/LID Ad Hoc Committee's work is to review tree regulations that apply to existing single-family development. Trees and vegetation on existing single-family properties are regulated by [BIMC Chapters 16.12 Shoreline Master Program](#) and [16.20 Critical Areas](#) where applicable, and outside of those sensitive areas, tree removal and property maintenance type activity is regulated by [BIMC Chapter 16.18 Land Clearing](#).

The Ad Hoc Committee also discussed whether to add single-family tree retention standards to both existing single-family properties and existing undeveloped single-family properties. Outside of shoreline and critical area regulations, tree retention standard are located in [BIMC Section 18.15.010.G](#). Currently, tree retention requirements only apply to commercial, mixed-use and multifamily developments. The tree retention requirements are in addition to any required perimeter or roadside buffer, which may be required for single-family subdivisions, commercial, mixed-use and multifamily developments, pursuant to [BIMC Section 18.15.010.D & E](#). Open Space requirements for single-family subdivision ([BIMC Chapter 17.12.030](#)) round out the list of existing tree retention regulations.

The Planning Commission held a study session on this ordinance on June 7, a public hearing on June 14, and additional study sessions on July 26 and August 9.

## II. Summary of Changes in Ordinance 2018-19

There is enough changes and reorganizing proposed to [BIMC Chapter 16.18 Land Clearing](#) that the chapter is proposed to be repealed and replaced in full (Exhibit A to Ordinance 2018-19). Substantive changes to [BIMC Chapter 16.18 Land Clearing](#) include:

- Chapter title changed to Tree Removal, Forest Stewardship, Exceptional Trees and Vegetation Maintenance
- Permit name changed from Clearing Permit to Tree Removal/Vegetation Maintenance Permit
- The purpose of the chapter is more explicit and expansive.
- All tree and vegetation activities within shoreline areas, critical areas or their buffers are subject to a minor shoreline or minor critical area permit instead of a permit under BIMC Chapter 16.18 (see page 3, BIMC 16.18.030).
- The time-period for limited tree removal without a permit lengthened from 12-months to 36-months (see page 3, BIMC 16.18.040.B).
- Currently, outside of the Mixed Use Town Center/High School Road Districts, a property owner may remove 6 significant trees without needing to get a permit. This regulation is proposed to be split by property size, with properties one acre or less in size only allowed to remove 3 significant trees without a permit (see page 3, BIMC 16.18.040.B).
- Integration of a new “Exceptional tree” category. This category is recommended by the Planning Commission to replace the recent “Landmark tree” designation created by Ordinance 2018-25 and amended by Ordinance 2018-32 (see discussion below, and page 3 [16.18.030.C], page 4 [16.18.050.C], page 6 [16.18.070.A], page 8 [16.18.090.B] and page 11 [16.18.130]).

The most impactful change proposed to [BIMC Section 18.15.010 Landscaping, screening, and tree retention, protection and replacement](#) in Ordinance 2018-19 is new tree retention requirements for single-family properties, both developed and undeveloped. The new tree retention requirement is based upon tree units/acre in the R-2.9, R-3.5 and R-4.3 zones, described in [BIMC Section 18.15.010.G.4](#) (see page 6 of Ordinance 2018-19, page 5 of Exhibit A BIMC 16.18.050.G) and by area in the R-0.4, R-1 and R-2 zones (see page 5 of Exhibit A BIMC 16.18.050.F).

## III. [ORDINANCE 2018-25 PROTECTION OF LANDMARK TREES](#)

At their meeting on June 26, the City Council voted 6-1 to adopt a [Landmark Tree Preservation Ordinance 2018-25](#). A summary of why the ordinance was adopted can be read on the [City's website](#). The Council then amended the Landmark Tree provisions on August 21 by approving [Ordinance 2018-32](#) to change the approval authority from the City Council to the Planning Director.

The process for Landmark Tree Retention is summarized below (a full list of the process is described in the [ordinance](#)):

1. Anyone who wishes to remove a Landmark Tree must submit an Application for Removal of a Landmark Tree to the Department of Planning and Community Development.
2. If the Planning Director grants an application for removal of a Landmark Tree upon a finding that removal is necessary, then, depending on certain criteria, the property owner who submitted the application is required to provide mitigation planting and/or a fee-in-lieu.

#### IV. PLANNING COMMISSION ACTION

The Planning Commission completed their review of Ordinance 2018-19 at the August 9 meeting, integrating a new "exceptional tree" category as part of the recommendation to the City Council. The "exceptional tree" category and regulations are proposed to replace Ordinance 2018-25 Protection of Landmark Trees. See the Commission's motion below.

Motion: The Planning Commission forwards to the City Council Ordinance 2018-19 as amended proposing amendments to BIMC Chapter 18.15, section 010, and the repeal and replacement of BIMC Chapter 16.18 included as Exhibit A in a DRAFT dated August 6, 2018 with amendments. Further, with reference to Ordinance 2018-25 (the "Landmark Tree Ordinance") we recommend repeal of the ordinance concurrent with the adoption of Ordinance 2018-19 recognizing that BIMC 16.18 will include provisions for designating and protecting specific "Exceptional" trees including "Landmark" trees.

Quitslund/Pearl: Passed Unanimously

A tree qualifies as a "Landmark Tree" under Ordinances 2018-25 & 2018-32 based upon the size (Diameter at Breast Height, dbh) and species- basically "Landmark Trees" are trees that are large for their species. The Planning Commission recommendation about what qualifies as an "Exceptional tree" is below (see page 11 Exhibit A to Ord. 2018-19, BIMC Section 16.18.130):

"Exceptional tree" means a tree that constitutes an important asset to the community, on account of its species, age, unique historical, aesthetic, and /or ecological characteristics, such that its preservation is a matter of concern. Criteria for determining whether a tree is an Exceptional tree, to be considered by an ISA certified arborist and the director, shall include the following:

1. Whether the tree species is rare or common on Bainbridge Island, or listed as an endangered or threatened species
2. The size of the tree
3. Whether the tree is a Veteran Tree – older than European settlement of Bainbridge Island
4. Whether the tree is a Champion Tree – shown to be the largest of its species on Bainbridge Island or in the greater geographic area.
5. Whether the tree is a Historic Tree – associated with a famous person or a major event
6. Whether the tree is a Commemorative Tree – planted in dedication to someone or something known to the community.
7. Whether the tree is a Landmark Tree – visible from public space that stands out from others visually or remarkably, such as one that people see coming ashore from the ferry, at a major street intersection or at a park entrance.
8. Trees designated as Heritage Trees pursuant to the program established by Resolution 2006-11 as modified by Resolution 2014-19 become "Exceptional Trees" as of (INSERT EFFECTIVE DATE OF ORDINANCE 2018-19).

Staff is concerned that this description of what kind of tree is an "exceptional tree" is so broad that it would be difficult to administer and difficult to help property owners understand if they have an exceptional tree on their property. Using the "exceptional tree" description proposed by the Planning Commission, a property owner would need to hire an arborist to tell them if they have an "exceptional tree". The Department of Planning and Community Development respond to many residents (over the phone, over the counter, via email) about whether they need a permit to cut down one or more trees on their property.

The existing regulations protect trees in environmentally sensitive areas, open spaces, and in the residential zones, require a Clearing Permit to remove more than 6 significant trees (see definition below) in a 12-month period. These parameters, including looking at City GIS mapping layers for critical areas, make it possible for a property owner, sometimes with staff assistance, to figure out if they need a permit to remove a tree. If the tree is protected in any way, then the property owner would need to engage the services of an arborist to request removal.

“Significant tree” means a: (1) a live evergreen tree 10 inches in diameter or greater, measured four and one-half feet above existing grade; or (2) a live deciduous tree 12 inches in diameter or greater, measured 4.5 feet above existing grade; or (3) in the Mixed Use Town Center and High School Road zoning districts, any live tree eight inches in diameter or greater, measured 4.5 feet above existing grade; or (4) any live trees located within a required critical area or critical area buffer as defined in Chapter 16.20 BIMC.

If the City Council wants to pursue this broad description for what qualifies as an “exceptional tree”, staff suggests a nomination process, where specific trees are nominated, and the property owner has an opportunity to agree or disagree with the nomination.

**ORDINANCE NO. 2018-19**

**AN ORDINANCE** of the City of Bainbridge Island, Washington, relating to tree removal permitting and tree and landscaping retention and maintenance requirements; repealing and replacing Bainbridge Island Municipal Code Chapter 16.18 and amending Section 18.15.010.

**WHEREAS**, in January 2014, the City Council convened an Ad Hoc Committee consisting of two Planning Commissioners and three Councilmembers to review and make recommendations on the City’s tree regulations; and

**WHEREAS**, the Ad Hoc Committee organized their review by first focusing on regulations that apply to the Mixed Use Town Center and High School zoning districts (approved Ordinance No. 2015-04); and

**WHEREAS**, the Ad Hoc Committee then reviewed tree and landscaping regulations that apply to the rest of the island, outside of the Winslow commercial zoning districts (approved Ordinance 2016-01); and

**WHEREAS**, the last phase of the Tree/LID Ad Hoc Committee’s work was to review tree regulations that apply to existing single-family development; and

**WHEREAS**, the Tree/LID Ad Hoc Committee discussed tree regulations that apply to existing single-family development during their meetings throughout 2017 and into 2018; and

**WHEREAS**, the Tree/LID Ad Hoc Committee completed their recommendations on tree regulations for single-family development in April 2018; and

**WHEREAS**, the Tree/LID Ad Hoc Committee recommendations have been integrated into Ordinance 2018-19; and

**WHEREAS**, the Planning Commission reviewed the draft Ordinance No. 2018-19 at a study session on June 7, 2018; and

**WHEREAS**, the Planning Commission conducted a public hearing on Ordinance No. 2018-19 on June 14, 2018 and continued to discuss the ordinance on July 26 and August 9; and

**WHEREAS**, the Planning Commission recommended approval of Ordinance No. 2018-19 on August 9 after integrating new regulations for “exceptional trees” intended to replace the “landmark tree” requirements of Ordinance 2018-25; and

**WHEREAS**, the City Council conducted a public hearing on Ordinance No. 2018-19 on XXXXX, 2018; and

**WHEREAS**, notice was given on June 11, 2018 to the Office of Community Development at the Washington State Department of Commerce in conformance with RCW 36.70A.106;

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

**Section 1.** Chapter 16.18 of the Bainbridge Island Municipal Code is hereby repealed and replaced as shown in Exhibit A.

**Section 2.** Section 18.15.010.A of the Bainbridge Island Municipal Code is amended to read as follows:

A. Purpose.

1. General. The purpose of this section is to preserve the landscape character of the community, link the Island's natural amenities with landscape greenbelts along roads, improve the aesthetic quality of the built environment, promote retention and protection of existing vegetation, reduce the impacts of development on wetlands, streams and the natural environment, enhance the value of current and future development and increase privacy for residential zones, and encourage preservation of significant ~~and heritage~~ trees by:
  - a. Retaining existing vegetation, tree stands and significant trees by incorporating them into the site design.
  - b. Incorporating native vegetation and drought resistant plant material into new landscape developments.
  - c. Providing vegetated screening between different intensities of residential uses, and between development and roads.
  - d. Providing visual relief of parking areas in the neighborhood centers, the Winslow Mixed Use Town Center, and the light manufacturing, (water-dependent) industrial, High School Road and urban multifamily districts.
  - e. Providing vegetated screening between residential and nonresidential areas.
  - f. Preserving, protecting, and enhancing critical areas.
  - g. Protecting the natural forested areas.

2. Specific Zone Districts. In addition to the regulations listed in subsection A.1 of this section:

- a. For single-family residential development and redevelopment in residential districts the intent is to preserve and enhance the City's physical and aesthetic character by retaining and maintaining trees within the residential landscape.

**Section 3.** Section 18.15.010.B of the Bainbridge Island Municipal Code is amended to read as follows:

B. Applicability.

1. All new development, except single-family residential building permits in the R-0.4, R-1 and R-2 zones, shall be subject to the requirements of this section, except as modified by subsections B.2 and B.3 of this section.
2. Projects subject to the conditional use permit process may be required to exceed the requirements of this chapter.
3. Specific submittal requirements for landscaping plans (tree protection, retention and planting plans) are included in the city's administrative manual.
4. Specific landscape requirements applicable to development in each zone district are indicated with an "X" and summarized in the following Table 18.15.010-1.

**Table 18.15.010-1: Landscape Requirements by Zone District**

Landscape Requirements for Land Uses and Districts	Significant Tree and Tree Stand Retention <u>General Regulations</u>	Perimeter Landscape	Roadside Buffer	Parking Lot Landscaping	Total Site Tree Unit (TU) Requirements 18.15.010.G	Planting Requirements	Irrigation	Maintenance
<u>Single-family Residential properties in R-2.9, R-3.5 and R-4.3 zones</u>	<u>X</u>				<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>

**Section 4.** Section 18.15.010.C of the Bainbridge Island Municipal Code is amended to read as follows:

C. ~~General Regulations Tree Retention, Protection and Replacement.~~ Where Table 18.15.010-1 indicates that development must comply with the requirements of this subsection C, all development shall comply with the following requirements. These requirements are intended to supplement any regulations in Chapters [16.12](#) (Shoreline Master Program) and [16.20](#) (Critical Areas) BIMC, which remain the primary source of regulation for environmentally sensitive areas in Bainbridge Island. In the event , of any inconsistency between the requirements of this subsection C and the requirements of Chapters [16.12](#) and [16.20](#) BIMC, the requirements of Chapters [16.12](#) and [16.20](#) BIMC shall apply.

**Section 5.** Section 18.15.010.G of the Bainbridge Island Municipal Code is amended to read as follows:

G. Total Site Tree Unit Requirements.

1. Intent. The overall purpose of this section is to preserve the landscape character of the community through development standards by encouraging the retention of existing vegetation and significant trees by incorporating them into site design. The intent of this subsection G is to ensure that, to the degree practicable, (a) each development approval in the MUTC, HSR I and II, ~~R-5, R-8, R-14, and NC zone districts,~~ and (b) each development approval for nonresidential development property in the ~~R-5, R-4.3, R-3.5, R-2.9, R-2, R-1, and R-0.4 zone districts,~~ and (c) single-family residential development in the R-2.9, R-3.5, R-4.3 zone districts leaves the development parcel with at least a specified minimum amount of tree coverage, measured in tree units per acre, that reflects the degree of tree coverage prior to development or redevelopment and that discourages avoidable site disturbances that would require tree removal.
2. Applicability. The regulations of this subsection G apply to ~~each~~ development applications involving (a) any modification to a ~~development~~ parcel located in the MUTC, HSR I and II, ~~R-5, R-8, R-14, or NC districts,~~ or (b) a permitted nonresidential development in the R-5, R-4.3, R-3.5, R-2.9, R-2, R-1, and R-0.4 zone districts, and (c) new and existing single-family residential development in the R-2.9, R-3.5 and R-4.3 zones. If a ~~substantial-significant~~ portion of a significant tree trunk, dripline and/or critical root zone extends onto an adjacent property, both properties may use the tree units ~~for retaining the trees~~ to meet the requirements of subsection G.4 of this section, upon mutual agreement. These provisions shall not apply to projects involving only interior renovation of existing buildings.
3. Site Specific Evaluation of Total Impact on Tree Coverage.
  - a. In order to show how the tree unit requirements of subsection G.4 of this section are being met, the applicant shall submit the following information as part of the landscaping plan information for a land use permit application:
    - i. Identify and survey all existing trees to be retained as part of the proposed development;

- ii. If opting to meet tree unit requirements pursuant to subsection G.4.a.~~iv~~<sup>iii</sup> of this section, the applicant shall also identify the species and DBH of each tree to be removed;
    - iii. The applicant shall also submit valuation of all trees to be retained, using the valuation standards of the International Society of Arboriculture (see administrative manual for submittal requirements for landscaping plans).
  - b. In determining which trees will be retained on a property to meet the tree unit requirements of subsection G.4, an applicant shall attempt to retain trees greater than 15 inches, trees in tree stands and trees adjacent to tree stands on adjacent properties, unless such retention would prevent reasonable use of a property and no other alternative is feasible.
  - c. A Tree Removal/Vegetation Maintenance permit pursuant to BIMC Chapter 16.18 is required to request removal of any tree that is contributing to a property meeting the tree unit retention requirements of section G.4. Replanting may be required to ensure that the property continues to meet the retention requirements.
- 4. Requirements.
  - a. A development application covered by subsection G.2 of this section shall only be approved if it complies with the requirements of subsections C (General Regulations Tree Retention, Protection, and Replacement), D (Perimeter Buffering and Screening), E (Street Frontage Landscaping), and F (Parking Lot Landscaping) of this section, and also complies with subsection G.4.a.i, ii or iii of this section.
    - i. In the MUTC central core and ferry terminal overlay districts, the development parcel shall have at least 30 tree units per acre following the proposed development or redevelopment.
    - ii. In the MUTC Ericksen Avenue, Madison Avenue, and gateway overlay districts, and each site in the R-5, R-8, R-14, HSR I and II, and NC districts, and for permitted nonresidential development in the ~~R-5~~, R-4.3, R-3.5, R-2.9, R-2, R-1, and R-0.4 zone districts, the development parcel shall have at least 40 tree units per acre following the proposed development or redevelopment.
    - iii. In the R-4.3, R-3.5, R-2.9 zone districts, existing single-family residential development, developing single-family residences and vacant parcels shall have at least 30 tree units per acre following the proposed development or redevelopment.
    - iv. As an alternative to subsections G.4.a.i, ~~and ii, and iii~~ of this section, and at the applicant's option, the development parcel will contain at least the same number of tree units after the proposed development or redevelopment as it had before that development or redevelopment.
  - b. Existing and new trees in roadside, perimeter, and shoreline buffers and/or critical areas and their buffers do not count towards the tree unit requirements of this

section. If an applicant is choosing to meet their tree unit requirements using subsection G.4.a.iii of this section, the existing trees in those protected areas and buffers will not count towards the “pre-development” amount of tree units.

5. Calculation of Tree Units.

- a. Each tree preserved on a development parcel shall earn the number of tree units shown in Table 18.15.010-5, based on its diameter at breast height (DBH) as measured in inches. If the DBH measurement results in a fraction, the requirement shall be rounded to the nearest whole number (greater than or equal to 0.5 is rounded up; less than 0.5 is rounded down).

**Table 18.15.010-5: Tree Unit Conversion Table for Preserved Trees [1]**

DBH	Tree Units	DBH	Tree Units	DBH	Tree Units
3 – 5	1.0	24 – 26	6.2	39 – 40	10.8
6 – 10	1.2	27 – 28	7.0	41 – 42	11.4
11 – 12	1.4	29 – 30	7.8	43 – 44	12.0
13 – 15	2.0	30 – 31	8.4	45 – 46	12.6
16 – 18	3.2	32 – 33	9.0	47 – 48	13.2
19 – 20	3.8	34 – 36	9.6	49+	13.8
21 – 23	4.6	37 – 38	10.2		

[1] For multi-stemmed trees, measure the DBH of each trunk separately, multiply each of these measurements by itself, add up these amounts, and calculate the square root of that total to find the DBH for the tree as a whole.

~~b. Tree Retention Bonus.~~

- ~~i. If retained trees occur in a tree stand, they shall earn 1.2 times the tree unit value shown in Table 18.15.010-5.~~
- ~~ii. If the retained trees occur in a tree stand that is adjacent to a tree stand on an adjacent lot that is already protected as part of a land use permit or conservation easement, they shall earn one and one-half times the tree unit value shown in Table 18.15.010-5 instead of the bonus described in subsection G.5.b.i of this section.~~

~~iii. If the retained tree is one designated through the city's heritage tree program it shall earn two times the tree unit value shown in Table 18.15.010-5, and the tree shall not receive additional bonus in subsections G.5.b.i and ii of this section for location in a tree stand.~~

~~iv. If the retained tree is located within a designated wildlife corridor network, it shall earn one and one-half times the tree unit value shown in Table 18.15.010-5.~~

be. Each new or replacement tree planted shall earn one tree unit. New trees planted to meet the minimum parking lot landscaping requirements of subsection F of this section do not count towards meeting tree unit credits under this section. New trees planted in or around a parking lot that exceed the minimum requirements of subsection F of this section can be counted towards meeting required tree units.

cd. If, after complying with subsections C, D, E, and F of this section, additional trees need to be planted to meet the minimum tree unit requirements in subsection G.4 of this section:

- i. In the MUTC central core and ferry terminal overlay districts, those trees may be planted either at ground level or above ground level (such as a patio, terrace, or rooftop); and
- ii. In the MUTC Ericksen Avenue, Madison Avenue, and gateway overlay districts, R-8, R-14, HSR I and II, NC districts, as well as for nonresidential developments within residential districts, those trees shall be planted at ground level.

**Section 6.** This ordinance shall take effect and be in force five (5) days from its passage, approval, and publication as required by law.

PASSED BY THE CITY COUNCIL this XX day of XXX, 2018.

APPROVED BY THE MAYOR this XX day of XXX, 2018.

\_\_\_\_\_  
Kol Medina, Mayor

ATTEST/AUTHENTICATE:

\_\_\_\_\_  
Christine Brown, City Clerk

FILED WITH THE CITY CLERK: XXXX, 2018

PASSED BY THE CITY COUNCIL: \_\_\_\_\_

PUBLISHED: \_\_\_\_\_  
EFFECTIVE DATE: \_\_\_\_\_  
ORDINANCE NUMBER: 2018-19

**BIMC Chapter 16.18**  
**Tree Removal, Forest Stewardship, Exceptional Trees and Vegetation Maintenance**

**16.18.010 Overview.**

- A. The policies presented in this chapter rest on an assumption that in the care of trees and vegetation on their property, citizens will be guided by common sense and best practices, responsive to the Purposes stated in section 16.18.025 below. Sanctions shall be applied to activities that are found by the planning director to be reckless and destructive, and to any action or negligence that adversely affects a neighboring property, pursuant to the provisions of section 16.18.120 and other applicable provisions of the Code.
- B. To a large extent, work carried out in landscaped yards and forested areas does not require a permit (see section 16.18.040 below). However, property owners who are considering major changes to the landscape and trees on their property should seek advice and professional services from a licensed arborist who is certified by the American Society of Consulting Arborists or the International Society of Arboriculture, or a landscape professional who is certified by the City.
- C. This chapter is one of several in the Municipal Code that pertain to the care of trees, vegetation, and forested areas on Bainbridge Island. Its policies and non-regulatory provisions pertain especially to the plans and ongoing activities of Island residents, outside of their homes or places of business but on their own property, when the use and enjoyment of the property involves stewardship and maintenance of trees and vegetation.

**16.18.020 Findings.**

- A. Forested areas and trees on individual lots are integral parts of Bainbridge Island's character; they enhance the City's appearance and livability, as well as providing significant environmental benefits and natural resource values.
- B. Conserving and managing the Island's forested areas and native vegetation is a central goal of the Bainbridge Island *Comprehensive Plan*: see Guiding Principles 1 & 5 and related Policies; Goals LU-6, 12 & 13; EN-3, 4, 5, 18 & 19; WR-3 & 4; and Policies LU 4.10 & EN 15.3.
- C. Trees are valued by homeowners and, when well cared for, enhance property values.
- D. Removal of trees and understory vegetation, combined with extensive disturbance of soils, cause loss of habitat and wildlife, runoff and soil erosion, degradation of surface water and aquifer recharge, and adverse impacts on air quality, as well as loss of aesthetic appeal.
- E. The community forest resources of the Island are best understood as a mosaic, with some large and many small pieces, on publicly owned and private properties. When clearing for

development further fragments the mosaic, both individual and community interests are affected.

- F. On Bainbridge Island and elsewhere, examples exist to demonstrate that development for residential and other uses can be compatible with careful conservation of forest conditions and other natural features; and that such development can be cost-effective, attractive, energy-efficient, and well adapted to our climate.

### **16.18.025 Purposes.**

This Chapter is adopted for the following purposes:

- A. To promote the public health, safety, and general welfare of Bainbridge Island citizens without preventing the reasonable use of private property.
- B. To preserve and enhance the City's physical and aesthetic character, to promote the healthy functioning of our Island's natural systems, and to provide economic benefits to the community, for the sake of present and future generations.
- C. To implement the purposes of the State Growth Management Act relating to conservation of natural resources, pursuant to RCW 36.70A.
- D. To implement goals and policies in the current *Comprehensive Plan*, the *Community Forest Management Plan (2006)*, the *Bainbridge Island Open Space Study (October 2008)*, and the *Bainbridge Island Community Wildfire Protection Plan (2010)*, or subsequent updated versions.
- E. To promote forest stewardship practices and carefully planned development that results in minimal disturbance to the prior conditions of a property and neighboring properties.
- F. To implement a long-range policy of maintaining the Island's forest canopy cover while taking measures to prevent wildfires and protect structures in accordance with recommendations of the Bainbridge Island Fire Department.
- G. To allow limited tree and vegetation removal to provide for solar access, agriculture and gardens.
- H. To promote infiltration of stormwater and aquifer recharge; to minimize erosion and prevent pollution; to prevent landslides; to protect the waters of Puget Sound and the quality and quantity of water in wells.
- I. To maintain in a healthy state significant trees, clusters of trees, and forested areas, allowing for thinning, pruning, removal of invasive and undesirable vegetation, selective harvest and replanting, developing and maintaining trails, and removal of dead, or dangerous trees.

**16.18.030 Applicability.**

Provisions of this chapter apply citywide to all properties where trees and naturally occurring vegetation are found, except where the following chapters of the Municipal Code apply:

- A. This chapter does not apply to any portion of a property that is identified as critical area(s) pursuant to BIMC Chapter 16.20 *Critical Areas* (i.e., wetland, fish and wildlife conservation area, geologically hazardous areas, frequently flooded areas and a designated aquifer recharge protection area [ARPA]) or a prescribed critical area buffer zone. In these areas, including an ARPA if one has been designated pursuant to BIMC Section 16.20.100, the regulations of BIMC Chapter 16.20 *Critical Areas* apply. Additionally, the regulations of this chapter do not apply to any property with a designated and approved ARPA.
- B. This chapter does not apply to the portion(s) of a shoreline property within 200 feet landward of an Ordinary High Water Mark, where the regulations of BIMC 16.12 (the *Shoreline Master Program*) apply.
- C. Exceptional tree regulations of this section apply citywide, even in areas governed by the BIMC Chapters 16.20 *Critical Areas* or 16.12 *Shoreline Master Program*.

**16.18.040 Activities Allowed without a Permit.**

The following activities are allowed without a Tree Removal/Vegetation Maintenance Permit, subject to any other applicable City regulations.

- A. Routine landscaping and maintenance of vegetation, such as pruning and planting, removal of invasive/exotic species, management of brush and seedling trees. Pruning should comply with ANSI A300 (Part 1 – 2017) Tree, Shrub and Other Woody Plant Management – Standard Practices to maintain long term health. This includes maintenance of trees and vegetation required to be retained or planted through a land use permit such as a subdivision, site plan review, or conditional use permit.
- B. Outside of the Mixed Use Town Center and High School Road zoning districts, removal of some healthy significant trees (see section 16.18.130 Definitions, noting that **Exceptional** trees are a different category) is allowed without a permit, except for trees required to meet any tree retention provisions of this chapter or BIMC 18.15.010 (*Landscaping, Screening, and Tree Retention, Protection and Replacement*), BIMC 17.12 (*Subdivision Design Standards*) or other applicable provisions of the Code. On a lot that is larger than one acre, a property owner may remove no more than six significant trees in any 36-month period. On a lot one acre or less in size, removal of three significant trees in any 36-month period is allowed without a permit; after this limit has been reached, see sections 16.18.050, .060, and .070. NOTE: Removal of trees that have not grown to the significant dimension is allowed without a permit at the discretion of the property owner.
- C. Removal of trees and ground cover in emergency situations involving immediate danger to life or structure or substantial fire hazards. If this activity would ordinarily require a tree

removal/vegetation maintenance permit, it shall be obtained as soon as possible after the emergency situation is stabilized.

- D. Removal of dead, or fallen trees. The city encourages property owners to leave dead trees in place for ecological benefit such as wildlife snags or nurse logs where possible. If a standing dead tree poses a hazard, creating a shorter wildlife snag is recommended.
- E. Routine maintenance activities in rights-of-way and required roadside buffers, including removal of hazard trees and invasive/exotic species, trimming of overgrown hedges, and planting to replace removed vegetation (see BIMC Chapter 12.04)
- F. The installation and maintenance of fire hydrants, water meters, and pumping stations, and street furniture by the city or utility companies or their contractors.
- G. Pruning and limbing of significant trees that are required to be retained, to remove dead or hazardous branches, and to improve the tree's form and long-term vitality, provided that such work is done by an ISA certified arborist.

**16.18.050 Activities Requiring a Permit.**

The following activities require an applicant to obtain a Tree Removal / Vegetation Maintenance Permit prior to commencing:

- A. A permit is required for any tree removal or vegetation maintenance in an area required to be retained or planted, pursuant to BIMC 18.15.010, through a land use permit such as a subdivision, a site plan review, or a conditional use permit. Tree retention requirements for the single-family residential zones, R-0.4, R-1, R-2 (see below, section BIMC Section 16.18.050.F) and R-2.9, R-3.5 and R-4.3 zones (BIMC 16.18.050.G) also apply (see below).
- B. For properties located outside of the Mixed Use Town Center and High School Road zoning districts, a tree removal permit is required for removing more than the number of significant trees allowed without a permit, pursuant to section 16.18.040.B above. The planting of a replacement tree or trees may be required.
- C. A tree removal/vegetation permit is required for the removal of any tree that qualifies as an **Exceptional tree** (see section 16.18.130 Definitions). The applicant shall place a notice on the property at the time a permit application is submitted. A permit for removal shall be granted by the Director only after preparation of a report and recommendation by a qualified arborist (ISA certified, with TRAQ credentials) and a review of reasons for and against removal, guided by these specific criteria:
  - 1. The removal is necessary to enable construction on or reasonable use of the property, and no alternative is feasible; or
  - 2. The removal is necessary to maintain utilities, access, or fulfill the terms of an easement or covenant recorded prior to the adoption of the ordinance codified in this chapter; or

3. The tree is diseased, dead, or otherwise determined to be a hazardous tree, as determined by an International Society of Arboriculture (ISA) Tree Risk Assessment Qualified (TRAQ) arborist.
- D. For developed properties located within the Mixed Use Town Center and High School Road zoning districts, a tree removal / vegetation maintenance permit is required for removing any tree eight inches in diameter or greater, measured 4.5 feet above grade. The applicant must demonstrate that the requested removal meets one of the following criteria:
1. The tree is dead, or determined to be hazardous, as certified by an International Society of Arboriculture (ISA) Tree Risk Assessment Qualified (TRAQ) arborist; or
  2. The removal is necessary to allow reasonable use or enable permitted construction, and no alternative is feasible; or
  3. The removal is necessary to maintain utilities, provide access, or fulfill the terms of an easement or covenant recorded prior to the adoption of the ordinance codified in this chapter.
- E. For undeveloped properties within the Mixed Use Town Center and High School Road zoning districts, a tree removal / vegetation maintenance permit is required to remove any tree except trees that are hazardous, dead, fallen, or contributing to an emergency. The tree removal permit will be reviewed for consistency with any applicable provisions of BIMC 18.15.010 that would apply to future development permits.
- F. For developed single-family residential properties in the R-0.4, R-1 and R-2 zones without an approved ARPA pursuant to Section 16.20.100, the following limits on vegetation removal apply:
1. Properties  $\leq$  40,000 square foot in size could clear up to 2,000 square feet of vegetation. Clearing between 2,001-6,999 square feet would be allowed with an approved ARPA stewardship plan (BIMC Section 16.20.180.H)
  2. Developed Properties between 40,000 square foot in size and 100,000 square feet. in size could clear up to 4,000 square feet of vegetation. Clearing between 4,001-6,999 square feet would be allowed with an approved ARPA stewardship plan (BIMC Section 16.20.180.H)
  3. Developed Properties  $>$  100,000 square foot in size could clear up to 6,999 square feet of vegetation. (note: ARPA designation threshold 7,000 square feet; BIMC Section 16.20.100).
- G. Pursuant to BIMC section 18.15.010.G, in the R-4.3, R-3.5 and R-2.9 zoning districts, existing single-family residential development, developing single-family residences and vacant parcels shall retain at least 30 tree units per acre, or at least as many tree units as the property had on **(INSERT DATE WHEN ORDINANCE 2018-19 TAKES EFFECT)**. Replanting may be required as described in BIMC section 18.15.010.G.

**16.18.060 General Regulations and Standards.**

- A. While non-native and invasive species should be kept under control and eradicated if possible, native understory vegetation shall be maintained and land disturbing activity shall be kept to a minimum. Stump pulling and use of heavy equipment is only allowed if the activity will not affect the health of adjacent trees.
- B. An applicant shall protect any trees or landscaped area that must be retained during approved tree removal or vegetation maintenance work, pursuant to the protection provisions of BIMC 18.15.010.C.4.
- C. Once a portion of a property is cleared, the property owner shall ensure that invasive species do not reestablish or expand into cleared areas.
- D. Any tree or vegetation removal or maintenance undertaken without a permit pursuant to this section shall be done to ensure long-term health of the trees or vegetation. A property owner shall follow the ANSI A300 (Part 1 – 2017) Tree, Shrub and Other Woody Plant Management – Standard Practices (Pruning) or 60% live-crown ratio, whichever standards is more appropriate for the species.
- E. A forest practice permit from the State Department of Natural Resources may be required pursuant to RCW 76.09. Failure to obtain a forest practice permit when applicable shall be grounds for denial of all applications for permits or approvals, including building permits and subdivision approvals, relating to non-forestry uses of the land for a period of six years, in accordance with RCW 76.09.060.

**16.18.070 Tree Removal/Vegetation Maintenance Permit Administration and Review Process.**

- A. For activities requiring a permit, the process begins with submission of a complete permit application, usually after discussion of the proposed activity with a member of the Planning staff. A complete permit application for removal of an Exceptional tree must be accompanied by an ISA-certified arborist report that includes (1) checking any tree designated as diseased with a resistograph or tomograph to ascertain internal decay, (2) a laboratory report of the types of pathogens that may be infecting the roots, and (3) any control measures that are available.

Notice of submission of an application to remove an Exceptional tree shall be posted by the applicant at a conspicuous location on the subject property. The notice shall describe the specific Exceptional tree that is the subject of the permit application and shall remain posted in said location until the permit has been issued or denied by the Planning Director and all appeals have been exhausted.

- B. Tree removal and vegetation maintenance activities shall comply with this chapter's provisions for permits and related regulations. Permits for tree removal / vegetation maintenance may require the planting of replacement trees and/or other City permits such as a *Site Assessment Review* (BIMC Chapter 15.19).

- C. The planning director shall grant a tree removal/ vegetation maintenance permit if the application meets the requirements of this chapter and is consistent with other relevant city codes, including but not limited to Chapters 15.19, 15.20, 16.12, 16.20, 17.12, 18.15.010 BIMC. If the tree removal permit application is denied, the decision may be appealed pursuant to BIMC 16.18.100.
- D. No work authorized by a tree removal/ vegetation maintenance permit shall commence until a permit notice has been posted by the applicant at a conspicuous location on the subject property. The notice shall describe specific plans for tree removal and land disturbing activity and shall remain posted in said location until the authorized tree removal has been completed.
- E. Any tree removal/ vegetation maintenance permit granted under this chapter shall expire one year from the date of issuance. Upon a showing of good cause, the permit may be extended for six months by the planning director. Approved tree removal permits shall not be amended without authorization of the planning director.
- F. A tree removal / vegetation maintenance permit may be suspended or revoked by the planning director because of incorrect information supplied or any violation of the provisions of this chapter.

**16.18.080 After-the-fact Tree Removal/Vegetation Maintenance Permit.**

- A. In response to a report that one or more trees have been removed improperly or vegetation maintenance activity did not comply with requirements of the BIMC, the City's Code Enforcement Officer shall investigate. If in fact the reported activity was legitimate without a permit, no action will be taken. If the reported activity would have been allowed if a permit had been applied for, an after-the-fact Tree Removal/Vegetation Maintenance Permit shall be issued. The person or persons responsible for unauthorized tree removal shall be made aware of all the conditions for approval and any applicable regulations and remedies. The fee for an after-the-fact permit shall be established by a resolution of the City Council.
- B. If the reported activity would not have been permitted, entirely or in some particulars, the Code Enforcement Officer, in consultation with the planning director or the city attorney, shall follow the procedures for Enforcement and penalty in section 16.18.120 of this chapter.
- C. If an Exceptional tree has been removed or altered in violation of this chapter, the Code Enforcement Officer, in consultation with the planning director or the city attorney, shall follow the procedures for Enforcement and penalty in 16.18.120 of this chapter, as established by the City Council by Resolution.

**16.18.090 Mitigation and Restoration**

- A. For alterations to or removal of significant trees or vegetation that require a permit under this chapter, the following minimum performance standards for mitigation shall be met; provided, that if the applicant can demonstrate that greater functions or values can be obtained through the application of different standards, these standards may be modified:
1. Historic structural and functional values shall be restored, including water quality and habitat functions;
  2. Historic soil types and configuration shall be replicated;
  3. The disturbed area shall be replanted with vegetation that replicates the vegetation historically found on the site in species types, sizes, and densities. The historic functions and values should be replicated at the location of the alteration;
  4. Any applicable tree retention or replanting requirements shall be met through restoration, if required.
- B. For alterations to or removal of Exceptional trees, the following minimum performance standards shall be met for mitigation:
1. The quantity of Replacement Trees is calculated by multiplying the Diameter Breast Height of the subject Exceptional tree by 50% to establish the number of replacement inches; and
  2. The total number of Replacement Trees is determined by the total caliper inches of Replacement Trees equaling or exceeding the required tree replacement inches established in Subsection B(1) of this section; or
  3. In lieu of planting Replacement Trees, an applicant may satisfy the tree replacement requirements by:
    - a. Planting at least three Replacement Trees on the property from which the Exceptional tree was removed; and
    - b. Contributing to the Bainbridge Island Tree Fund at a rate of \$500.00 per each replacement inch not accounted for in the planting of Replacement Trees; and
    - c. The sum of the tree replacement inches accounted for by contributing to the Bainbridge Island Tree Fund and the total caliper inches of the Replacement Trees planted shall not be less than the total replacement inches calculated in Subsection B(1) of this section.
- C. Information demonstrating compliance with the requirements of this section shall be submitted to the director.

**16.18.100 Performance assurance.**

- A. The planning director may require, as a condition for the granting of a permit, that the applicant furnish a performance assurance in a form approved by the planning director, in order to obligate the applicant, after the approved tree removal has been accomplished, to complete all required replanting, erosion control, and cleanup on the property. The surety device shall be in an amount equal to the estimated cost of such services, with surety and conditions satisfactory to the planning director.
- B. In order to stay enforcement, the director may choose to enter into a voluntary correction agreement (VCA). This is a civil contract entered between the City and the applicant. The VCA will outline several performance items that will be required within an agreed-upon time frame.

**16.18.110 Appeals.**

Appeals of the planning director's decision on a tree removal/vegetation maintenance permit application shall be in accordance with the administrative decision procedures established in Chapter 2.16 BIMC.

**16.18.120 Violations, Restoration and Enforcement**

- A. It is a violation of this chapter for any person to fail to comply with a requirement of this chapter. It is also a violation of this chapter for any person to:
  1. Initiate or maintain, or cause to be initiated or maintained, the removal of significant tree(s) or native vegetation within the city without first obtaining permits or authorizations required by this chapter, or in a manner that violates the terms or conditions of such permits or authorizations or this chapter;
  2. Misrepresent any material fact in any application, plans or other information submitted to obtain permits or authorizations under this chapter; or
  3. Remove or deface any sign, notice, complaint, or order required by or posted in accordance with this chapter.
- B. When a significant tree or vegetation has been removed or altered in violation of this chapter, all ongoing development work shall stop, and the significant tree or vegetation shall be restored or replaced. The city shall have the authority to issue a stop work order to cease all ongoing development work, and order restoration, rehabilitation, or replacement measures at the owner's or other responsible party's expense to compensate for violation of provisions of this chapter.
- C. Restoration Plan Required. All development work shall remain stopped until a restoration plan is prepared and approved by the director. Such a plan shall be prepared by a

qualified professional using the best available science and shall describe how the actions proposed meet the minimum requirements described in subsection 16.18.090 of this chapter. The director shall, at the violator's expense, seek expert advice in determining the adequacy of the plan. Inadequate plans shall be returned to the applicant or violator for revision and resubmittal.

- D. Site Investigations. The director is authorized to make site inspections and take such actions as are necessary to enforce this chapter. The director shall present proper credentials and make a reasonable effort to contact any property owner before entering onto private property.
- E. Penalties. Any development or activity carried out contrary to the provisions of this chapter shall constitute a public nuisance and may be enjoined as provided by the statutes of the state of Washington. Enforcement of this chapter and the imposition of penalties for violations of this chapter shall be as provided for in Chapter [1.26](#) BIMC; provided, that in addition to the civil penalties provided for in BIMC [1.26.090](#), an additional penalty shall be imposed on any person, party, firm, corporation, property owner, or other legal entity who fails to complete a required restoration plan, who conducts any disturbance (including cutting or removing trees or vegetation) in violation of this chapter, or who is otherwise in violation of this chapter.

For such violations, the additional penalty shall be in the amount equal to 200 percent of the cost of restoration as approved under a restoration plan pursuant to subsections C and D of this section for a minor violation. For a major violation, the additional penalty shall be in the amount equal to 200 percent of the cost of restoration as approved under a restoration plan pursuant to subsections C and D of this section, or \$2,500, whichever is greater. The director shall determine whether the disturbance is a minor or major violation. Any unlawful or damage to an exceptional tree is a major violation. Any person, party, firm, corporation, or other legal entity who knowingly and willfully refuses to complete a required restoration pursuant to subsections C and D of this section shall be guilty of a misdemeanor punishable by not more than 30 days in jail and/or not more than a \$1,000 fine.

### **16.18.130 Definitions.**

“Applicant” means a person, corporation, or organization that files an application for a land use or development permit with the city: either the owner of the land in question, or the authorized agent of such a person.

“Aquifer recharge protection area (ARPA)” means a portion of a development site comprised of native or equivalent vegetation in which existing vegetation, topography and supporting soils are free of development, uses or activities detrimental to the aquifer recharge of the total site area.

“Arborist” means an individual engaged in the profession of arboriculture who, through experience, education, and related training, possesses the competence to provide for or supervise the management of trees and other woody plants. Must be concurrently an International Society of Arboriculture (ISA) Certified Arborist to perform any role required of a Certified Arborist.

“Arborist, ISA Certified” means an arborist holding a current International Society of Arboriculture (ISA) Certified Arborist credential.

“Arborist, Tree Risk Assessment Qualified (TRAQ)” means an arborist who has successfully completed the International Society of Arboriculture (ISA) TRAQ training course and assessment and holds a valid ISA TRAQ credential.

“Clearing” means the destruction and removal of vegetation by manual, mechanical, or chemical methods.

**“Exceptional tree”** means a tree that constitutes an important asset to the community, on account of its species, age, unique historical, aesthetic, and /or ecological characteristics, such that its preservation is a matter of concern. Criteria for determining whether a tree is an Exceptional tree, to be considered by an ISA certified arborist and the director, shall include the following:

1. Whether the tree species is rare or common on Bainbridge Island, or listed as an endangered or threatened species
2. The size of the tree
3. Whether the tree is a Veteran Tree – older than European settlement of Bainbridge Island
4. Whether the tree is a Champion Tree – shown to be the largest of its species on Bainbridge Island or in the greater geographic area.
5. Whether the tree is a Historic Tree – associated with a famous person or a major event
6. Whether the tree is a Commemorative Tree – planted in dedication to someone or something known to the community.
7. Whether the tree is a Landmark Tree – visible from public space that stands out from others visually or remarkably, such as one that people see coming ashore from the ferry, at a major street intersection or at a park entrance.
8. Trees designated as Heritage Trees pursuant to the program established by Resolution 2006-11 as modified by Resolution 2014-19 become “Exceptional Trees” as of **(INSERT EFFECTIVE DATE OF ORDINANCE 2018-19)**.

“Invasive / exotic species” means opportunistic plant species (either native or non-native) that colonize disturbed ecosystems and may come to dominate the plant community in ways that are seen by us as reducing the values provided by the previous plant community.

“Land disturbing activity” means any activity that results in a change in the existing soil cover (both vegetative and nonvegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to, clearing, grading, filling and excavation. Compaction that is associated with stabilization of structures and road construction shall also be considered a land disturbing activity. Vegetation maintenance practices are not considered land disturbing activity. Stormwater facility maintenance is not considered land disturbing activity if conducted according to established standards and procedures.

“Low impact development (LID)” means a stormwater and land use management strategy that strives to mimic pre-disturbance hydrologic processes of infiltration, filtration, storage, evaporation and transpiration by emphasizing conservation, use of on-site natural features, site planning, and distributed stormwater management practices that are integrated into a project design.

“Low impact development best management practices (LID BMPs)” means distributed stormwater management practices, integrated into a project design, that emphasize pre-disturbance hydrologic processes of infiltration, filtration, storage, evaporation and transpiration. LID BMPs include, but are not limited to: bioretention, rain gardens, permeable pavements, roof downspout controls, dispersion, improvements to soil quality and depth, minimal excavation foundations, vegetated roofs, and water re-use.

“Significant tree” means a: (1) a live evergreen tree 10 inches in diameter or greater, measured four and one-half feet above existing grade; or (2) a live deciduous tree 12 inches in diameter or greater, measured 4.5 feet above existing grade; or (3) in the Mixed Use Town Center and High School Road zoning districts, any live tree eight inches in diameter or greater, measured 4.5 feet above existing grade; or (4) any live trees located within a required critical area or critical area buffer as defined in Chapter 16.20 BIMC.

“Vegetation” means plant matter, including trees, shrubs and ground cover.

## **ORDINANCE NO. 2018-25**

**AN ORDINANCE** of the City of Bainbridge Island, Washington, adopted pursuant to RCW 36.70A.390; imposing an interim official control in the form of a new chapter to Title 16 of the Bainbridge Island Municipal Code related to the preservation, protection, and retention of Landmark Trees located on Bainbridge Island; specifying criteria for identification of Landmark Trees; stating the effect on vested rights; recognizing that a public hearing will be held within 60 days; authorizing interpretative authority; providing for severability; declaring an emergency; and establishing an immediate effective date.

**WHEREAS**, within the express terms of the Growth Management Act, the Washington State Legislature has specifically conferred upon the governing bodies of Washington cities the right to establish and adopt interim official controls related to land uses; and

**WHEREAS**, the City Council of the City of Bainbridge Island (“City”) updated the City’s Comprehensive Plan in February of 2017; and

**WHEREAS**, the City Council has significant concerns about development and growth in the City under current regulations in the context of the vision and goals of the City’s Comprehensive Plan, is discussing how to best accommodate growth and development in both general and specific ways, and finds that unless the City acts immediately to preserve the status quo, there are likely to be adverse impacts on the City and its citizens; and

**WHEREAS**, land clearing and development activities have resulted in the removal and loss of Landmark Trees on Bainbridge Island; and

**WHEREAS**, Landmark Trees, because of their age, size, and condition are recognized as having exceptional value in contributing to the character of the community; and

**WHEREAS**, the City has received numerous public comments expressing concern regarding the loss of Landmark Trees on Bainbridge Island; and

**WHEREAS**, the Planning Commission, Design Review Board, and the Ad Hoc Tree/LID Committee have expressed concern regarding the loss of trees on Bainbridge Island; and

**WHEREAS**, the preservation of trees is a community value supported by the policies and goals of the City’s Comprehensive Plan; and

**WHEREAS**, based on these and related concerns, the City Council requires additional time to review the regulations and policies at issue to ensure that the vision and goals of the City’s Comprehensive Plan are being met to the Council’s satisfaction; and

**WHEREAS**, the City possesses land use jurisdiction and regulatory authority over the City's incorporated lands; and

**WHEREAS**, the interim official control imposed herein promotes the public good and is necessary for the protection of public health, property, safety, and welfare. A public emergency exists requiring that the City's interim official control to become effective immediately upon adoption.

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

**Section 1. Findings of Fact.** The recitals set forth above are hereby adopted as the City Council's initial findings of fact in support of the interim official control established by this ordinance. The City Council may, in its discretion, adopt additional findings after the public hearing referenced in Section 4 below.

**Section 2. Interim Official Control Imposed.** A new Chapter 16.32 is added to Title 16 of the Bainbridge Island Municipal Code, to read as follows:

#### **Chapter 16.32 Protection of Landmark Trees**

##### **16.32.010 Definitions**

- A. "City Attorney" means the city attorney of the City of Bainbridge Island, or their designee.
- B. "Diameter Breast Height" means the diameter of a tree measured at 4.5 feet above the ground on the uphill side of the tree.
- C. "Landmark Trees" means trees, located on Bainbridge Island, that are unique because of their age, size, species, historical significance, or aesthetic quality and meet the criteria established by this chapter.
- D. "Planning Director" means the director of the Planning and Community Development Department of the City of Bainbridge Island, or their designee.
- E. "Replacement Tree" means a tree that is of a species native and indigenous to the site where a Landmark Tree was removed and is a minimum size of six feet in height measured from top of the root flare, with a minimum trunk diameter of one inch measured at four inches above the top of the root flare for both evergreen and deciduous trees.
- F. "Size" means the Diameter Breast Height of a tree.

##### **16.32.020 Landmark Tree Criteria.**

Landmark Trees are trees that meet the following criteria for their species:

Species	Size (Greater than or equal to)
Birch ( <i>Betula papyrifera</i> )	30"
Beech ( <i>Fagus grandifolia</i> )	36"
Catalpa ( <i>Catalpa speciosa</i> )	36"
American Elm ( <i>Ulmus americana</i> )	30"
Douglas Fir ( <i>Pseudotsuga menzesii</i> )	40"
Grand Fir ( <i>Abies grandis</i> )	40"
Horsechestnut ( <i>Aesculus hippocastanum</i> )	40"
Western Hemlock ( <i>Tsuga heterophylla</i> )	30"
Black locust ( <i>Robinia pseudoacacia</i> )	30"
Lombardy poplar ( <i>Populus nigra</i> )	38"
Pacific Madrone ( <i>Arbutus menzesii</i> )	24"
Bigleaf Maple ( <i>Acer macrophyllum</i> )	36"
Silver maple ( <i>Acer saccharinum</i> )	36"
Monkey Puzzle tree ( <i>Araucaria araucana</i> )	36"
Monterey pine ( <i>Pinus radiata</i> )	30"
Oregon White Oak ( <i>Quercus garryana</i> )	30"
Pin Oak ( <i>Quercus palustris</i> )	30"
Red Oak ( <i>Quercus rubra</i> )	38"
Ponderosa pine ( <i>Pinus ponderosa</i> )	30"
Western White pine ( <i>Pinus monticola</i> )	30"
Sitka Spruce ( <i>Picea sitchensis</i> )	36"
Sycamore ( <i>Platanus occidentalis</i> )	36"
English walnut ( <i>Juglans regia</i> )	30"
Western Red Cedar ( <i>Thuja plicata</i> )	30"

Coast Redwood ( <i>Sequoia sempervirens</i> )	30"
Japanese Laceleaf Maple	12"

**16.32.030 Landmark Tree Retention.**

- A. Except as otherwise allowed under this chapter, no person, corporation, or other legal entity shall remove a Landmark Tree without having obtained approval from the City Council.
- B. Prior to the removal of a Landmark Tree, any person, corporation, or other legal entity seeking to remove a Landmark Tree must submit an Application for Removal of a Landmark Tree to the Planning Director.
- C. Upon receipt of an Application for Removal of a Landmark Tree, the Planning Director will prepare a written recommendation on the removal for the City Council.
- D. Within sixty (60) days following the receipt by the Planning Director of an Application for Removal of a Landmark Tree, the City Council will hold a public hearing on the proposed removal.
- E. Following the public hearing and receipt of the Planning Director's recommendation, the City Council shall approve the removal, deny the removal, or request additional information. The City Council shall only approve the removal of a Landmark Tree upon a finding that at least one of the following criteria is met:
  - 1. The removal is necessary to enable construction on or reasonable use of the property, and no other alternative is feasible; or
  - 2. The removal is necessary to maintain utilities, access, or fulfill the terms of an easement or covenant recorded prior to the adoption of the ordinance codified in this chapter; or
  - 3. The tree is diseased, dead, or otherwise determined to be a hazardous tree as determined by a qualified professional pursuant to BIMC 18.15.010.C.1.c.
- F. If the City Council grants an application for removal of a Landmark Tree upon a finding that the removal is necessary to enable construction on or reasonable use of the property, and no other alternative is feasible, then the property owner that submitted the application shall be required to provide mitigation through the

planting of Replacement Trees on the property from which the Landmark Tree was removed in accordance with the following:

1. The quantity of Replacement Trees is calculated by multiplying the Diameter Breast Height of the subject Landmark Tree by fifty percent (50%) to establish the number of replacement inches; and
2. The total number of Replacement Trees is determined by the total caliper inches of Replacement Trees equaling or exceeding the required tree replacement inches established in subsection (F)(1) of this section.

G. In lieu of planting the Replacement Trees prescribed in subsection (F) of this section, an applicant may satisfy the tree replacement requirements by:

1. Planting at least three Replacement Trees on the property from which the Landmark Tree was removed; and
2. Contributing to the Bainbridge Island Tree Fund at a rate of \$500.00 per each replacement inch not accounted for in the planting of Replacement Trees; and
3. The sum of the tree replacement inches accounted for by contributing to the Bainbridge Island Tree Fund and the total caliper inches of the Replacement Trees planted shall not be less than the total replacement inches calculated in subsection (F) of this section.

#### **16.32.040 Emergencies.**

A. In emergency situations involving immediate danger to life or real property, removal of a Landmark Tree is permitted without first obtaining approval from the City Council; Provided, that the following conditions are satisfied:

1. The person, corporation, or other legal entity that removed the Landmark Tree submits an Application for Removal of a Landmark Tree under this chapter within fourteen (14) days after the emergency situation is stabilized; and
2. The person, corporation, or other legal entity that removed the Landmark Tree provides, within fourteen (14) days after the emergency situation is stabilized, the city with documentation establishing the existence of the emergency situation, with such documentation including at least four high resolution photographs evidencing the existence of the emergency situation; and
3. The City Council subsequently approves the removal pursuant to this chapter.

- B. If the conditions of subsection (A) of this section are not satisfied, the person, corporation, or other legal entity that removed the Landmark Tree without first obtaining approval from the City Council will be in violation of this chapter.

**16.32.050 Appeals.**

- A. The City Council's decision on an application for removal of a Landmark Tree may be appealed to the Kitsap County Superior Court in accordance with Chapter 36.70C RCW.
- B. All appeals must be filed within twenty-one (21) days following the issuance of the City Council's decision on the application.

**16.32.060 Violations and Penalties.**

- A. This chapter shall be enforced, and penalties for violations of this chapter will be imposed, pursuant to Chapter 1.26 BIMC, except that no Notice of Infraction may be issued under Chapter 1.26 BIMC for a violation of this chapter. In addition to Notices of Violation issued under BIMC 1.26.050 or BIMC 1.26.060, BIMC 1.26.070 will also govern the review and appeal of any Notice of Violation issued under Chapter 1.26 BIMC for a violation of this chapter.
- B. In addition to the civil penalties imposed under BIMC 1.26.090, an additional civil penalty will be imposed on any person, corporation, or other legal entity that removes a Landmark Tree without prior approval of the City Council. This additional civil penalty will be in the amount of \$25,000 for each Landmark Tree removed. The City Attorney will take appropriate action to collect this additional civil penalty.
- C. In the event of a conflict between the requirements of this chapter and any other requirement of the Bainbridge Island Municipal Code, this chapter will govern and control.

**Section 3. Effect on Vested Rights.** The interim official control imposed under Section 2 of this ordinance shall apply prospectively only. Nothing in this ordinance shall be construed to extinguish, limit, or otherwise infringe on any permit applicant's vested development rights as defined by state law and City of Bainbridge Island regulations, provided that such a permit applicant has filed a complete permit application before the effective date of this ordinance.

**Section 4. Public Hearing.** Pursuant to RCW 36.70A.390, the City Council shall hold a public hearing at a City Council meeting within 60 days of adoption of this ordinance in order to take public testimony and to consider adopting further findings of fact.

**Section 5. Interpretive Authority.** The City of Bainbridge Island Director of Planning and Community Development, or designee, is hereby authorized to issue official interpretations arising under or otherwise necessitated by this ordinance.

**Section 6. 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 7. Declaration of Emergency; Effective Date; Duration.** This ordinance, as a public emergency ordinance necessary for the protection of the public health, public safety, public property, and public peace, shall take effect and be in full force immediately upon its adoption. Pursuant to *Matson v. Clark County Board of Commissioners*, 79 Wn. App. 641 (1995), non-exhaustive underlying facts necessary to support this emergency declaration are included in the “Whereas” clauses above, all of which are adopted by reference as findings of fact as if fully set forth herein. This interim official control shall take effect immediately, and shall remain effective for six (6) months, unless terminated earlier by the City Council. Provided, that the Council may, at its sole discretion, renew the interim official control for one or more six month periods in accordance with state law. This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the City.

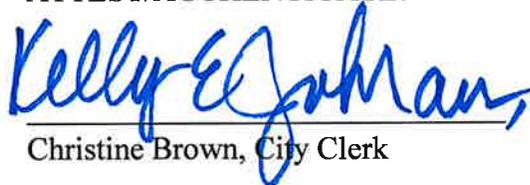
PASSED BY THE CITY COUNCIL this 26<sup>th</sup> day of June, 2018.

APPROVED BY THE MAYOR this 26<sup>th</sup> day of June, 2018.



Kol Medina, Mayor

ATTEST/AUTHENTICATE:

  
Christine Brown, City Clerk

DEPUTY CITY CLERK FOR  
CHRISTINE BROWN

FILED WITH THE CITY CLERK:	June 22, 2018
PASSED BY THE CITY COUNCIL:	June 26, 2018
PUBLISHED:	June 29, 2018
EFFECTIVE DATE:	June 26, 2018
ORDINANCE NUMBER:	2018-25

## **ORDINANCE NO. 2018-32**

**AN ORDINANCE** of the City of Bainbridge Island, Washington, adopted pursuant to RCW 36.70A.390; amending Chapter 16.32 of the Bainbridge Island Municipal Code related to the preservation, protection, and retention of Landmark Trees located on Bainbridge Island; stating the effect on vested rights; recognizing that a public hearing will be held within 60 days; authorizing interpretative authority; providing for severability; and leaving the effective date and duration of the interim official control unchanged.

**WHEREAS**, within the express terms of the Growth Management Act, the Washington State Legislature has specifically conferred upon the governing bodies of Washington cities the right to establish and adopt interim official controls related to land uses; and

**WHEREAS**, the City Council of the City of Bainbridge Island (“City”) updated the City’s Comprehensive Plan in February of 2017; and

**WHEREAS**, the City Council has significant concerns about development and growth in the City under current regulations in the context of the vision and goals of the City’s Comprehensive Plan, is discussing how to best accommodate growth and development in both general and specific ways, and finds that unless the City acts immediately to preserve the status quo, there are likely to be adverse impacts on the City and its citizens; and

**WHEREAS**, land clearing and development activities have resulted in the removal and loss of Landmark Trees on Bainbridge Island; and

**WHEREAS**, Landmark Trees, because of their age, size, and condition are recognized as having exceptional value in contributing to the character of the community; and

**WHEREAS**, the City has received numerous public comments expressing concern regarding the loss of Landmark Trees on Bainbridge Island; and

**WHEREAS**, the Planning Commission, Design Review Board, and the Ad Hoc Tree/LID Committee have expressed concern regarding the loss of trees on Bainbridge Island; and

**WHEREAS**, the preservation of trees is a community value supported by the policies and goals of the City’s Comprehensive Plan; and

**WHEREAS**, based on these and related concerns, the City Council requires additional time to review the regulations and policies at issue to ensure that the vision and goals of the City’s Comprehensive Plan are being met to the Council’s satisfaction; and

**WHEREAS**, the City possesses land use jurisdiction and regulatory authority over the City’s incorporated lands; and

**WHEREAS**, on June 26, 2018, the City Council adopted Ordinance No. 2018-25, which imposed an interim official control to promote the public good and was necessary for the protection of public health, property, safety, and welfare; and

**WHEREAS**, in adopting Ordinance No. 2018-25, the City Council found that a public emergency exists requiring that the City's interim official control come into effect immediately upon adoption; and

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

**WHEREAS**, the City Council now desires to change the procedure through which an Application for Removal of a Landmark Tree is reviewed; and

**WHEREAS**, since the adoption of Ordinance No. 2018-25, the Planning and Community Development Department has received several Applications for Removal of a Landmark Tree; and

**WHEREAS**, the interim official control promotes the public good and is necessary for the protection of public health, property, safety, and welfare, and the public emergency on which the interim official control was imposed continues to exist and this ordinance does not change the basis for that declaration of emergency nor the effective date of the interim official control, which is June 26, 2018.

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

**Section 1. Findings of Fact.** The recitals set forth above are hereby adopted as additional and supplemental findings of fact to the City Council's initial findings of fact in support of the interim official control, as established by Ordinance No. 2018-25. The City Council may, in its discretion, adopt additional findings after the public hearing referenced in Section 6 below.

**Section 2. Interim Official Control Amended.** Section 16.32.030 of the Bainbridge Island Municipal Code is amended to read as follows:

**16.32.030 Landmark Tree Retention.**

- A. Except as otherwise allowed under this chapter, no person, corporation, or other legal entity shall remove a Landmark Tree without having obtained approval from the Planning Director City Council.

- B. Prior to the removal of a Landmark Tree, any person, corporation, or other legal entity seeking to remove a Landmark Tree must submit an Application for Removal of a Landmark Tree to the Department of Planning and Community Development Director.
- C. Upon receipt of an Application for Removal of a Landmark Tree, the Planning Director will review the application materials and consider the request based upon the criteria outlined in this chapter. prepare a written recommendation on the removal for the City Council.
- ~~D. Within sixty (60) days following the receipt by the Planning Director of an Application for Removal of a Landmark Tree, the City Council will hold a public hearing on the proposed removal.~~
- ~~D. E. Following the public hearing and receipt of the~~ The Planning Director's recommendation, the City Council shall approve the removal, deny the removal, or request additional information. The Planning Director City Council shall only approve the removal of a Landmark Tree upon a finding that at least one of the following criteria is met:
1. The removal is necessary to enable construction on or reasonable use of the property, and no other alternative is feasible; or
  2. The removal is necessary to maintain utilities, access, or fulfill the terms of an easement or covenant recorded prior to the adoption of the ordinance codified in this chapter; or
  3. The tree is diseased, dead, or otherwise determined to be a hazardous tree as determined by a qualified professional pursuant to BIMC 18.15.010.C.1.c.
- ~~E. F. If the Planning Director City Council grants an Application for Removal of a Landmark Tree upon a finding that the removal is necessary to enable construction on or reasonable use of the property, and no other alternative is feasible, then the property owner that submitted the application shall be required to provide mitigation through the planting of Replacement Trees on the property from which the Landmark Tree was removed in accordance with the following:~~
1. The quantity of Replacement Trees is calculated by multiplying the Diameter Breast Height of the subject Landmark Tree by fifty percent (50%) to establish the number of replacement inches; and
  2. The total number of Replacement Trees is determined by the total caliper inches of Replacement Trees equaling or exceeding the required tree replacement inches established in subsection (~~EF~~)(1) of this section.

F. ~~G.~~ In lieu of planting the Replacement Trees prescribed in subsection (~~EF~~) of this section, an applicant may satisfy the tree replacement requirements by:

1. Planting at least three Replacement Trees on the property from which the Landmark Tree was removed; and
2. Contributing to the Bainbridge Island Tree Fund at a rate of \$500.00 per each replacement inch not accounted for in the planting of Replacement Trees; and
3. The sum of the tree replacement inches accounted for by contributing to the Bainbridge Island Tree Fund and the total caliper inches of the Replacement Trees planted shall not be less than the total replacement inches calculated in subsection (~~EF~~) of this section.

**Section 3. Interim Official Control Amended.** Section 16.32.040 of the Bainbridge Island Municipal Code is amended to read as follows:

**16.32.040 Emergencies.**

- A. In emergency situations involving immediate danger to life or real property, removal of a Landmark Tree is permitted without first obtaining approval from the Planning Director ~~City Council~~; Provided, that the following conditions are satisfied:
1. The person, corporation, or other legal entity that removed the Landmark Tree submits an Application for Removal of a Landmark Tree under this chapter within fourteen (14) days after the emergency situation is stabilized; and
  2. The person, corporation, or other legal entity that removed the Landmark Tree provides, within fourteen (14) days after the emergency situation is stabilized, the city with documentation establishing the existence of the emergency situation, with such documentation including at least four high resolution photographs evidencing the existence of the emergency situation; and
  3. The Planning Director ~~City Council~~ subsequently approves the removal pursuant to this chapter.
- B. If the conditions of subsection (A) of this section are not satisfied, the person, corporation, or other legal entity that removed the Landmark Tree without first obtaining approval from the Planning Director ~~City Council~~ will be in violation of this chapter.

**Section 4. Interim Official Control Amended.** Section 16.32.050 of the Bainbridge Island Municipal Code is amended to read as follows:

**16.32.050 Appeals.**

- A. The Planning Director's City Council's decision on an Application for Removal of a Landmark Tree may be appealed to the hearing examiner as described in BIMC 2.16.020.P.1 ~~the Kitsap County Superior Court in accordance with Chapter 36.70C RCW.~~
- B. All appeals must be filed within fourteen ~~twenty-one (1421)~~ days following the issuance of the Planning Director's City Council's decision on the application.

**Section 5. Interim Official Control Amended.** Section 16.32.060 of the Bainbridge Island Municipal Code is amended to read as follows:

**16.32.060 Violations and Penalties.**

- A. This chapter shall be enforced, and penalties for violations of this chapter will be imposed, pursuant to Chapter 1.26 BIMC, except that no Notice of Infraction may be issued under Chapter 1.26 BIMC for a violation of this chapter. In addition to Notices of Violation issued under BIMC 1.26.050 or BIMC 1.26.060, BIMC 1.26.070 will also govern the review and appeal of any Notice of Violation issued under Chapter 1.26 BIMC for a violation of this chapter.
- B. In addition to the civil penalties imposed under BIMC 1.26.090, an additional civil penalty will be imposed on any person, corporation, or other legal entity that removes a Landmark Tree without prior approval of the Planning Director City Council. This additional civil penalty will be in the amount of \$25,000 for each Landmark Tree removed. The City Attorney will take appropriate action to collect this additional civil penalty.
- C. In the event of a conflict between the requirements of this chapter and any other requirement of the Bainbridge Island Municipal Code, this chapter will govern and control.

**Section 6. Public Hearing.** Pursuant to RCW 36.70A.390, the City Council shall hold a public hearing at a City Council meeting within 60 days of adoption of this ordinance in order to take public testimony and to consider adopting further findings of fact.

**Section 7. Effect on Vested Rights.** The amendments to the interim official control imposed under this ordinance shall apply prospectively only. Nothing in this ordinance shall be construed to extinguish, limit, or otherwise infringe on any permit applicant's vested development rights as defined by state law and City of Bainbridge Island regulations, provided that such a permit applicant has filed a complete permit application before the effective date of this ordinance.

**Section 8. Interpretive Authority.** The City of Bainbridge Island Director of Planning and Community Development, or designee, is hereby authorized to issue official interpretations arising under or otherwise necessitated by this ordinance.

**Section 9. 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 10. Declaration of Emergency; Effective Date; Duration.** This ordinance, as a public emergency ordinance necessary for the protection of the public health, public safety, public property, and public peace, shall take effect and be in full force immediately upon its adoption. Pursuant to *Matson v. Clark County Board of Commissioners*, 79 Wn. App. 641 (1995), non-exhaustive underlying facts necessary to support this emergency declaration are included in the "Whereas" clauses above, all of which are adopted by reference as findings of fact as if fully set forth herein. This interim official control shall take effect immediately and shall remain effective for the six (6) month period as established by Ordinance No. 2018-25, unless terminated earlier by the City Council. Provided, that the Council may, at its sole discretion, renew the interim official control for one or more six-month periods in accordance with state law. This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the City.

PASSED BY THE CITY COUNCIL this 21st day of August, 2018.

APPROVED BY THE MAYOR this 21st day of August, 2018.

  
\_\_\_\_\_  
Kol Medina, Mayor

ATTEST/AUTHENTICATE:

  
Christine Brown, City Clerk

FILED WITH THE CITY CLERK:	August 17, 2018
PASSED BY THE CITY COUNCIL:	August 21, 2018
PUBLISHED:	August 24, 2018
EFFECTIVE DATE:	August 21, 2018
ORDINANCE NUMBER:	2018-32



CITY OF  
BAINBRIDGE ISLAND

## City Council Study Session Agenda Bill

**MEETING DATE:** September 4, 2018

**ESTIMATED TIME:** 5 Minutes

**AGENDA ITEM:** (9:40 PM) Future Council Agendas,

**STRATEGIC PRIORITY:** Good Governance

**PRIORITY BASED BUDGETING PROGRAM:**

**AGENDA CATEGORY:** Discussion

**PROPOSED BY:** Executive

**RECOMMENDED MOTION:**

Review upcoming City Council meeting agendas.

**SUMMARY:**

Council will review upcoming City Council meeting agendas.

**FISCAL IMPACT:**

<b>Amount:</b>	
<b>Ongoing Cost:</b>	
<b>One-Time Cost:</b>	
<b>Included in Current Budget?</b>	

**BACKGROUND:**

**ATTACHMENTS:**

[Special City Council Meeting 091118.pdf](#)

[City Council Regular Business Meeting 091118.pdf](#)

[City Council Study Session 091818.pdf](#)

[City Council Regular Business Meeting 092518.pdf](#)

**FISCAL DETAILS:**

**Fund Name(s):**

**Coding:**



CITY OF  
BAINBRIDGE ISLAND

**SPECIAL CITY COUNCIL MEETING  
TUESDAY, SEPTEMBER 11, 2018**

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

**AGENDA**

1. **CALL TO ORDER/ROLL CALL - 5:00 PM**
2. **EXECUTIVE SESSION**
  - 2.A 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 pursuant to RCW 42.30.110(1)(i). 60 Minutes
3. **ADJOURNMENT - 5:55 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.

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CITY OF  
BAINBRIDGE ISLAND

**CITY COUNCIL REGULAR BUSINESS MEETING  
TUESDAY, SEPTEMBER 11, 2018**

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. **APPROVAL OF AGENDA / CONFLICT OF INTEREST DISCLOSURE**
3. **PUBLIC COMMENT**
4. **MAYOR'S REPORT**
5. **CITY MANAGER'S REPORT**
6. **PRESENTATION(S)**
  - 6.A Proclamation Declaring September 27, 2018 as "First Responders Appreciation Day" - Mayor Medina 5 Minutes  
[First Responders Proclamation](#)
7. **PUBLIC HEARING(S)**
  - 7.A Amendments to the Shoreline Master Program (SMP) Relating to Integration of Critical Areas Regulations and Nonconforming Structures, Uses, and Lots
8. **UNFINISHED BUSINESS**
  - 8.A Friends of the Farms Request for Funding for City Farmland Management - Executive, 10 Minutes  
[Friends of the Farms Request for Funding](#)  
[Friends of the Farms Funding Proposal Slides](#)
  - 8.B Waterfront Park Bridge Repair Contract Award 10 Minutes  
[WFP Bridge Repair Contract.docx](#)  
[WFP Ped Bridge Bid Form.docx](#)

- 8.C Old Treatment Plant Pump Station Replacement Project Contract Award - Public Works 10 Minutes  
[Contract.docx](#)  
[OTP Bid Form.docx](#)
- 8.D Ordinance No. 2018-19 Modifying BIMC Chapter 16.18 Land Clearing and BIMC Section 18.15.010 with Consideration for "Landmark Tree" Regulations - Planning, 5 Minutes  
[CC Staff Memo](#)  
[Ordinance No. 2018-19 Tree Regulations](#)  
[Exhibit A 2018-19 Ch 16.18](#)  
[Ordinance No. 2018-25 Imposing an Interim Official Control related to Landmark Trees Approved 062618.pdf](#)
- 8.E Set Public Hearing on Ordinance No. 2018-32, Amending the Procedure for Review of Applications for Removal of Landmark Trees (Placeholder) 5 Minutes
- 8.F Council Position on Connecting Bainbridge Safe Mobility Levy - Executive, 10 Minutes

## 9. NEW BUSINESS

- 9.A Ordinance 2018-35 Amending BIMC Chapter 5 and Adopting Model Business License Code 10 Minutes  
[Ordinance No. 2018-21 Relating to Business Licenses Amending BIMC 5.04, 5.12, 5.16, 5.24, 5.28 and 5.40 Approved 062618.docx](#)  
[MRSC - July 2018 Business License Code Update Explanation](#)  
[MRSC - April 2018 Business Licensing Background](#)
- 9.B Country Club Road Bulkhead Repair and Outfall Replacement Project Professional Services Agreement 10 Minutes
- 9.C Manitou Park Boulevard Shoreline Stabilization Project Professional Services Agreement 10 Minutes  
[RFQ\\_Manitou Park Blvd Shoreline.pdf](#)
- 9.D Neighborhood Matching Grant Application for A Taste of Lynwood 10 Minutes  
[A Taste of Lynwood Application.pdf](#)  
[A Taste of Lynwood Presentation.pptx](#)
- 9.E Ordinance 2018-37 2019 Water Rates 10 Minutes
- 9.F Ordinance 2018-38 2019 Sewer Rates 10 Minutes

## 10. CONSENT AGENDA

- 10.A Accounts Payable and Payroll
  
- 10.B Interlocal Agreement and Use Agreement for RideAlong Application – Police 5 Minutes  
[Interlocal Agreement for RideAlong Labs Services](#)  
[RideAlong App Use Agreement](#)
  
- 10.C Resolution No. 2018-18 Reducing Speed Limits on Certain Roadways and Resolution No. 2018-23, Reducing speed Limits in Downtown Bainbridge Island/Winslow - Public Works, 5 Minutes  
[Resolution No. 2018-23](#)  
[Exhibit A to Resolution No. 2018-23](#)  
[Resolution\\_No.\\_2018-18\\_-\\_RLS\\_Edits\\_bl.docx](#)
  
- 10.D Professional Services Agreement for Rockaway Beach 5-Year Hydraulic Project Approval (HPA) Requirements - Public Works, 5 Minutes  
[Professional Services Agreement for Rockaway Beach 5-Year Hydraulic Project Approval \(HPA\) Requirements](#)  
[August 18, 2013 Hydraulic Project Approval Permit](#)

**11. COMMITTEE REPORTS**

**12. FOR THE GOOD OF THE ORDER**

**13. ADJOURNMENT**

**GUIDING PRINCIPLES**

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**CITY OF  
BAINBRIDGE ISLAND**

**CITY COUNCIL STUDY SESSION  
TUESDAY, SEPTEMBER 18, 2018**

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

**AGENDA**

- 1. CALL TO ORDER / ROLL CALL**
- 2. APPROVAL OF AGENDA/ CONFLICT OF INTEREST DISCLOSURE**
- 3. MAYOR'S REPORT**
- 4. PRESENTATIONS**
  - 4.A Report from Kitsap Economic Development Alliance (KEDA), 15 Minutes
- 5. UNFINISHED BUSINESS**
  - 5.A Update on Broadband Utility - Executive, 15 Minutes
- 6. NEW BUSINESS**
  - 6.A ETAC Recommendation regarding Groundwater Management Plan 20 Minutes
  - 6.B Code Enforcement Update 20 Minutes
- 7. CITY COUNCIL DISCUSSION**
  - 7.A Update on Moratorium Workplan 15 Minutes
  - 7.B Regional Committee Reports by Councilmember Liaisons - Mayor Medina, 10 Minutes

8. FUTURE COUNCIL AGENDAS
9. FOR THE GOOD OF THE ORDER
10. ADJOURNMENT

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**CITY OF  
BAINBRIDGE ISLAND**

**CITY COUNCIL REGULAR BUSINESS MEETING  
TUESDAY, SEPTEMBER 25, 2018**

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. APPROVAL OF AGENDA / CONFLICT OF INTEREST DISCLOSURE**
- 3. PUBLIC COMMENT**
- 4. MAYOR'S REPORT**
- 5. CITY MANAGER'S REPORT**
- 6. PRESENTATION(S)**
  - 6.A Proclamation Declaring October 2018 as Filipino American History Month - Mayor Medina 5 Minutes
  - 6.B Recognition of Indigenous Peoples Day - Councilmember Peltier 5 Minutes
  - 6.C Proclamation Declaring October 2018 as National Community Planning Month - Planning 5 Minutes
  - 6.D 2019-2020 Proposed Budget Presentation 30 Minutes
- 7. PUBLIC HEARING(S)**
  - 7.A Ordinance No. 2018-20  
Revisions to Titles 2, 17, and 18 related to land use review approval bodies and procedures, subdivision standards, and related zoning regulations.

- 7.B Shoreline Master Program (SMP) Limited Amendment -- Aquaculture
  
- 7.C Ordinance No. 2018-19 Modifying BIMC Chapter 16.18 Land Clearing and BIMC Section 18.15.010 with Consideration for "Landmark Tree" Regulations - Planning, 45 Minutes  
[Ordinance No. 2018-25 Imposing an Interim Official Control related to Landmark Trees Approved 062618.pdf](#)
  
- 7.D Public Hearing on Ordinance No. 2018-32, Amending the Procedure for Review of Applications for Removal of Landmark Trees (Placeholder) 20 Minutes

## 8. UNFINISHED BUSINESS

- 8.A Manitou Park Boulevard Stabilization Project Professional Services Agreement (AB 18-177 - Unfinished Business) 10 Minutes
  
- 8.B Ordinance 2018 - XX Adopting the 2019-2024 Capital Improvement Plan (place holder) 20 Minutes

## 9. NEW BUSINESS

## 10. CONSENT AGENDA

## 11. COMMITTEE REPORTS

## 12. FOR THE GOOD OF THE ORDER

## 13. ADJOURNMENT

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