

**ORDINANCE NO. 2011-13**

**AN ORDINANCE** of the City of Bainbridge Island, Washington, relating to the public hearing requirements for development regulations and public noticing requirements for land use applications, and amending Section 2.14.020, Section 2.16.085 and Section 2.16.095 of the Bainbridge Island Municipal Code.

**WHEREAS**, the City has established public hearing requirements for development regulations and public noticing requirements for land use applications; and

**WHEREAS**, City Council has determined that the requirements should be amended in order to provide more effective public outreach;

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

**Section 1.** Section 2.14.020 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

**2.14.020 Review process – Public hearing.**

Proposed development regulations shall be reviewed under the process established in ~~Resolution No. 96-48~~ the governance manual, as approved by council resolution. The city council shall hold a public hearing on the proposed development regulation at the second reading of the proposed development regulation. ; ~~provided, that proposed development regulations that shall have a public hearing before the planning commission pursuant to BIMC 2.36.010 shall not also be subject to a public hearing before the city council.~~ Notice of public hearings for development regulations shall follow the criteria set forth in BIMC 2.14.030.

**Section 2.** Section 2.16.085 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

**2.16.085 Notice requirements.**

A. Types of Notifications. All applications, except those exempted in subsection G of this section, require the following notifications:

1. Notice of complete application;
2. Notice of application and public comment period;
3. Notice of public hearing, if a public hearing is required; and
4. Notice of decision and appeal period.

B. Notice of Complete Application.

1. Within 28 days after receiving a land use permit application, the department director shall either mail, fax, or otherwise provide to the applicant a written determination, stating either that the application is complete or that the application is incomplete and what is necessary to make the application complete.
2. If the application is determined to be incomplete, the department director will request additional information in writing.
3. Within 14 days after an applicant has submitted additional information identified by the department director as being necessary for a complete application, the department director shall notify the applicant whether the application is complete or what additional information is necessary.
4. If the department director does not provide a written determination as to whether the application is complete within the 28 days, the application shall be deemed complete as of the twenty-eighth day.

C. Notice of Application and Public Comment Period – Notice to Public.

1. Within 14 days of a notice of complete application, the department director shall issue a notice of application for a land use application subject to SEPA review and/or requiring a public hearing. The notice of application shall provide a minimum comment period of 14-21 days. For projects requiring review under the State Environmental Policy Act (SEPA), the SEPA threshold determination shall not be issued prior to the expiration of the notice of application comment period.
2. Method of Notice. The notice of application shall be provided to the public and other government agencies with jurisdiction over some aspect of the application by the following means:
  - a. Mailing written notice to ~~adjoining property owners at the~~ addresses listed on the property tax records of Kitsap County for properties located within 500 feet of any boundary of the subject property and including any addresses within 500 feet of any contiguous property in the applicant's ownership;
  - b. Posting notice in the official posting places of the city, including the city website;
  - c. Publishing notice in the official newspaper of the city; and
  - d. Posting the subject property in a manner prescribed by the city.
3. Notice of Application Contents. The notice of application shall contain the following information:
  - a. Date of application, date of notice of complete application, and date of notice of application;
  - b. Description of proposed project, location and street address if applicable;
  - c. Identification of requested permits, requested studies, other permits not included in the application and existing environmental documents pertaining to the proposal;
  - d. A statement of the date, time and place of any scheduled public hearing related to the application;
  - e. A statement of the 14-21-day comment period and any appeal rights;

- f. Statements of the right for any person to comment on the application, receive notice of and participate in any public hearing, and request a copy of any decision; and
- g. A statement of the preliminary determination, if any, of development regulations that will be used for project mitigation.

D. Notice of Public Hearing. Notice for an application requiring a public hearing shall provide in the following manner:

- 1. Time of Notice. The hearing examiner shall provide notice of the public hearing at least 15 days prior to the hearing or as otherwise provided by law.
- 2. Method of Notice. The hearing examiner shall provide notice of an appeal hearing as provided in subsections D.2.a through D.2.c of this section and shall provide public notice for any other public hearing by:
  - a. Posting notice in the official posting places of the city, including the city website;
  - b. Publishing notice in the official newspaper of the city at least 14 days prior to the hearing or as otherwise provided by law;
  - c. Mailing the applicant and appellant, if applicable;
  - d. Mailing notice to the address listed on the property tax records of Kitsap County for property located within ~~300~~ 500 feet of any boundary of the subject property and including any addresses within ~~300~~ 500 feet of any contiguous property in the applicant's ownership;
  - e. Mailing notice to any person who has submitted a written request for notice of the hearing; and
  - f. Posting the subject property in a manner prescribed by the city.
- 3. Public Hearing Notice Contents. The hearing examiner shall prepare notice of an upcoming public hearing on the application containing the following information:
  - a. Applicant, agent and project name;
  - b. Name and telephone number of the permit coordinator and name of the hearing examiner;
  - c. Hearing date, time and place;
  - d. Location of the proposal and street address if applicable;
  - e. Brief description of the proposal and requested permit;
  - f. Vicinity map;
  - g. Citation of the code section requiring public hearing;
  - h. SEPA determination, if applicable;
  - i. Procedures for public comment;
  - j. Appeal procedures when appropriate;
  - k. The decision being appealed and the name of the appellant, if applicable;
  - l. A brief description of the decision being appealed, if applicable; and
  - m. A statement of who may participate in the appeal, if applicable.

E. Notice of Decision and Appeal Period.

- 1. A notice of decision shall be issued upon a final decision on a land use application. Notice of decision shall include:
  - a. A statement indicating that the application is approved, approved with modifications, denied or remanded;

- b. A statement of any conditions included as part of a decision for approval or approval with modifications;
  - c. A statement of facts upon which the decision, including any conditions, is based and the conclusions of law derived from those facts;
  - d. The SEPA threshold determination and mitigation conditions as specified in Chapter 16.04 BIMC, if applicable; and
  - e. Procedures for appeal under BIMC 2.16.130, if applicable.
2. The decision maker shall distribute the notice of decision by mail, fax, or personal service to the applicant, the applicable department director and any persons requesting notice or submitting comments on the application prior to the decision.

F. Combining Public Notices. If a land use application is subject to environmental review under Chapter 16.04 BIMC (Chapter 43.21C RCW) and requires a SEPA threshold determination, the SEPA public notice and notice of SEPA public comment period, if any, shall be combined with other land use application notices when possible. A combined notice shall include a statement that a single comment letter may be submitted to the SEPA official, addressing impacts as well as other issues subject to review under the decision criteria for the land use application.

G. Exemptions from Public Notice Requirements. The following land use applications do not require a notice of application and public comment period or notice of decision:

1. A building permit or other construction permit;
2. An administrative decision which is categorically exempt under SEPA (Chapter 43.21C RCW), unless the permit application procedures require a public comment period or public hearing.

**Section 3.** Section 2.16.095 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

**2.16.095 Administrative decision procedures.**

A. Applicability. This section applies each time a provision of this code authorizes administrative review of land use application.

B. State Environmental Policy Act. The State Environmental Policy Act (SEPA) and the Bainbridge Island SEPA ordinance (Chapter 16.04 BIMC) may also apply to actions processed under this section.

C. Participation in the Decision. Any person may comment on a proposed decision by submitting written comments on the application to the applicable department director prior to the end of the notice of application 14 21-day comment period for those applications not otherwise exempted under BIMC 2.16.085.G.

D. Decision Procedures. In making a decision, the department director shall consider the applicable decision criteria of this code, all other applicable law, and any necessary documents and approvals.

1. Environmental Review. For a land use application subject to Chapter 43.21C RCW and Chapter 16.04 BIMC, a SEPA threshold determination may be issued simultaneously with the final decision of the land use application.

2. Planning Commission Recommendation. When written public comments are received during the public comment period concerning the effect on the land use application of the comprehensive plan, shoreline master program or matters not addressed by specific provisions of this code, the director of planning and community development may request the planning commission to review an application and make a written recommendation prior to the director making a decision. The planning commission will consider the land use application at a public meeting.

a. The planning commission shall recommend approval, approval with modifications or denial of an application.

b. In making a recommendation, the planning commission shall consider the applicable decision criteria of this code, all other applicable law, and any necessary documents and approvals.

c. If the applicable criteria are not met, the planning commission shall recommend the proposal be modified or denied.

d. A planning commission recommendation is not a final decision and therefore there is no appeal of the recommendation.

3. Transmittal of Planning Commission Recommendation. The planning commission's recommendation and other documents upon which its decision is based shall be immediately transmitted to the director of planning and community development.

4. Single Report. The department director shall prepare a single consolidated report setting forth all the recommendations and decisions made on the application as of the date of the report. The report shall state any mitigation required or proposed under the development regulations or as required through SEPA, Chapter 43.21C RCW. The report shall include the SEPA determination if a determination has not previously been issued.

E. Department Director Decision. The department director may approve, approve with modifications or deny the application based on the decision criteria, findings of fact, recommendations of the planning commission and design review board as appropriate, and any necessary documents and approvals.

F. Corrections or Clarification.

1. The department director may amend the decision at any time to correct clerical errors clearly identifiable from the public record. Such a correction does not affect any time limit provided for in this chapter.

2. The department director may clarify a statement in the written decision at any time as long as the clarification does not materially alter the decision.

G. Effect of Decision. Subject to the provisions of subsection H of this section, the decision of the department director is the final decision of the city.

H. Appeal of the Decision. The decision of the department director to approve or deny a land use application may be appealed to the hearing examiner in accordance with the

procedures of BIMC 2.16.130; provided, that the decision of the department director to approve or deny any of the following land use applications may not be appealed to the hearing examiner:

1. Administrative decisions of the public works director; and
2. Sign permit.

**Section 4.** Section 16.04.130 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

**16.04.130 Public notice.**

A. Whenever the city issues a DNS under WAC 197-11-340(2) or 197-11-355, or a DS under WAC 197-11-360(3) the city shall give public notice as follows:

1. When possible, public notice requirements under SEPA should be combined with notice requirements for an application. This notice shall state whether a DS or a DNS was issued and when all comments are due. (For example, if the timing for notice requirements for a subdivision or construction project coincide with the timing requirements under SEPA, then the city shall combine information on the application notice and have one time frame for all comments.) The city will use whichever notice requirements are greater except when issuing a DNS under the optional DNS process, in which case the requirements of WAC 197-11-355 shall be met.
2. The city shall give notice of a DNS or DS by using all of the following means:
  - a. Posting the property for site-specific proposals or mailing to property owners within ~~300~~ 500 feet of the proposal if the project is site-specific, or both, as determined by the responsible official. For posting, the applicant shall supply and erect an eight-square-foot notice board on all site-specific projects on all adjacent rights-of-way or in accordance with requirements set forth by the office of planning and community development; and
  - b. Publishing notice in the city's legal newspaper; and
  - c. Notifying public or private groups which have expressed interest in writing for a certain proposal or in the type of proposal being considered; and
  - d. Sending notice to agencies as directed by the responsible official (either general lists or lists for specific proposals for subject areas); and
  - e. Any other reasonable method calculated to inform the public and other agencies or required by statute or ordinance, as determined by the responsible official.
3. Whenever the city issues a DS under WAC 197-11-360(3), the city shall state the scoping procedure for the proposal in the DS as required in WAC 197-11-408 and in the public notice.

B. Whenever the city issues a DEIS under WAC 197-11-455(5) or a SEIS under WAC 197-11-620, notice of the availability of those documents shall be given by indicating the availability of the DEIS in any public notice required for a nonexempt license and all of the following methods:

1. Posting the property for site-specific proposals or mailing to property owners within ~~300~~ 500 feet of the proposal, if the project is site-specific, or both, as determined by the responsible official. For posting, the applicant shall supply and erect an eight-square-foot notice board on all site-specific projects in accordance with requirements set forth by the office of planning and community development; and
2. Publishing notice in the city's legal newspaper; and

3. Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered; and
4. Sending notice to agency mailing lists (either general lists or lists for specific proposals for subject areas); and
5. Any other reasonable method calculated to inform the public and other agencies or required by statute or ordinance, as determined by the responsible official.

C. Whenever possible, the city shall integrate the public notice required under this section with existing notice procedures for the city's nonexempt permit(s) or approval(s) required for the proposal.

D. Notice of public hearings shall be published no later than 15 days before the hearing. Notices shall be mailed to owners of property within ~~300~~ 500 feet of the site and posted as described in this section.

E. The city shall require an applicant to complete the public notice requirements for the applicant's proposal at the applicant's expense, compensate the city for costs of carrying out the public notice requirements on behalf of the applicant, or provide services or materials to assist the city in carrying out the public notice requirements.

**Section 5.** 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 24<sup>th</sup> day of August, 2011.

APPROVED BY THE MAYOR this 24<sup>th</sup> day of August, 2011.



\_\_\_\_\_  
Kirsten Hytopoulos, Mayor

ATTEST/AUTHENTICATE:



\_\_\_\_\_  
Rosalind D. Lassoff, City Clerk

FILED WITH THE CITY CLERK:	August 5, 2011
PASSED BY THE CITY COUNCIL:	August 24, 2011
PUBLISHED:	August 26, 2011
EFFECTIVE DATE:	August 31, 2011
ORDINANCE NUMBER:	2011-13

