

ORDINANCE NO. 2009-21

AN ORDINANCE of the City of Bainbridge Island, Washington, relating to the Council-Manager form of municipal government; amending various sections of the Bainbridge Island Municipal Code ("BIMC") to reflect the recent change in form of government of Bainbridge Island from Mayor-Council to Council-Manager plan of government; amending BIMC Sections 1.08.010, 2.02.010, 2.08.030, 2.12.010, 2.20.030, 2.20.060, 2.20.150, 2.24.020, 2.28.060, 2.38.020, 2.38.025, 2.46.040, 2.50.010, 2.64.020, 2.64.030, 2.80.110, 3.24.020, 3.52.060, 3.60.050, 3.64.050, 3.72.070, 3.73.010, 3.80.040, 3.82.020, 3.84.010, 3.86.020, 5.06.200, 6.04.010, 8.24.040, 9.25.030, 9.40.060, 10.08.210, 10.32.090, 12.06.120, 12.40.080, 13.24.010, 13.24.110, 13.28.080, 13.28.180, 18.37.060, and 18.117.030; and repealing BIMC Chapter 2.09.

WHEREAS, due to the recent change in form of government of Bainbridge Island from the Mayor-Council to the Council-Manager plan of government, it is requested that the City Council amend a number of sections of the Bainbridge Island Municipal Code ("BIMC") to reflect and be consistent with this new form of government; and

WHEREAS, most of the proposed amendments will substitute the term City Manager for the terms City Administrator or Mayor within the referenced BIMC sections in order to avoid any potential/actual conflicts with applicable state law and to provide clear authorization as to the duties and obligations of the City Manager; and

WHEREAS, the City Council has determined that it is in the best interest of the City of Bainbridge Island to amend the BIMC to reflect and be consistent with this new form of government and state law; now, therefore,

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

Section 1. Section 1.08.010 of BIMC Chapter 1.08, General Provisions, is hereby amended as follows:

"1.08.010 Adoption of classification.

Pursuant to and in accordance with RCW 35A.02.030 (Chapter 119, Laws Extraordinary Session 1967, Section 35A.02.030), and pursuant to Resolution No. 7/7/69, adopted by the city on the seventh day of July, 1969, and published on the eleventh day of July, 1969, the city council adopts for the city the classification of noncharter code city, and reaffirms its intention to retain the plan of government under which it presently is

operating and declares that it will continue to operate under the plan of government which it presently has. Pursuant to an election held on May 19, 2009 in accordance with RCW 35A.06.040, 35A.06.050, 29.04.330 and other applicable law, the results of which were certified by the Kitsap County Auditor on June 3, 2009, the city adopted the council-manager form of government as set forth in Chapter 35A.13 RCW, endowed with all the applicable rights, powers, privileges, duties and obligations of noncharter code cities as set forth in RCW Title 35A as the same now exists, including, but not by way of limitation, those set forth in Chapter 35A.11 RCW, and further including any and all supplements, amendments or other modifications of said RCW Title 35A which may hereafter be enacted.”

Section 2. Section 2.02.010 of BIMC Chapter 2.02, Hours of Business, is hereby amended as follows:

“2.02.010 Hours of business.

General administrative offices and departments of the city shall be open for the transaction of business with the public from the hours of 8:00 a.m. to 4:00 p.m., five days per week, Monday through Friday, excepting legal holidays; provided, that the city manager ~~mayer~~ may alter the hours of operations of city offices on a temporary basis, as the city manager ~~mayer~~ deems necessary for the efficient operation of the city. Public safety services will be provided 24 hours per day.”

Section 3. Section 2.08.030 of BIMC Chapter 2.08, City Officers, is hereby amended as follows:

“2.08.030 Appointive offices designated.

The following appointive offices of the city are established:

A. Director of finance and administrative services;

~~B. Deputy treasurer;~~

~~BC. Chief of police;~~

~~D. Director of field operations;~~

~~CE. Municipal judge;~~

~~DF. Municipal judge pro tempore;~~

~~EG. City attorney;~~

~~FH. City prosecutor;~~

~~GI. Director of public works;~~

~~HJ. Fire marshal;~~

~~IK. Director of planning and community development;~~

~~JL. Building official;~~

~~KM. City manager administrator;~~

~~LN. City clerk;~~

~~MO. Court administrator;~~

~~NP. Systems manager~~ Director of information and technology;

OQ. Accounting manager;

~~PR. Administrative assistant.~~

The salary of each appointive officer, and the salary or wage of each appointive officer working under such appointive officer, shall be set by the city council; provided, that the compensation for municipal judge, ~~municipal judge pro tempore,~~ city attorney, city prosecutor and fire marshal shall be set by contract approved by the city council.”

Section 4. BIMC Chapter 2.09, City Administrator, is hereby repealed in its entirety.

Section 5. Section 2.12.010 of BIMC Chapter 2.12, Fire Marshal, is hereby amended as follows:

“2.12.010 Appointment.

The city manager ~~mayor~~ of the city is authorized to appoint a city fire marshal.”

Section 6. Section 2.20.030 of BIMC Chapter 2.20, Municipal Court, is hereby amended as follows:

“2.20.030 Judges– Appointment – Qualifications.

A. The municipal judge holding office on July 1, 1984, the effective date of the ordinance codified in this chapter, shall continue to hold office until expiration of his or her term or January 1, 1986, whichever occurs first. The term of a successor shall commence on January 1, 1986, and/or January 1st of each fourth year thereafter, pursuant to appointment as provided below.

B. The municipal judge shall be appointed by the city manager ~~mayor~~, subject to confirmation by the city council, for a term of four years. Appointments shall be made on or before December 1st of the year next preceding the year in which the term commences.

C. A person appointed as municipal judge shall be a citizen of the United States of America and of the state of Washington; and an attorney admitted to practice law before the courts of record of the state of Washington.”

Section 7. Section 2.20.060 of BIMC Chapter 2.20, Municipal Court, is hereby amended as follows:

“2.20.060 Judges pro tem.

The municipal judge ~~mayor~~ shall, in writing, designate ~~appoint~~ judges pro tem who shall act in the absence or disability of the regular judge of the

municipal court or subsequent to the filing of an affidavit of prejudice. The judge pro tem shall be qualified to hold the position of judge of the municipal court as provided herein. The judge pro tem shall receive such compensation as shall be fixed by ordinance. ~~The term of the appointment shall be specified in writing but in any event shall not extend beyond the term of the appointing mayor.~~”

Section 8. Section 2.20.150 of BIMC Chapter 2.20, Municipal Court, is hereby amended as follows:

“2.20.150 Removal of judge.

A municipal judge shall be removed only upon conviction of misconduct or malfeasance in office, or because of physical or mental disability rendering the judge incapable of performing the duties of the office. For any vacancy in the municipal court due to death, disability or resignation of the municipal court judge, the city manager shall be filled appointed a municipal court judge by the city manager mayor, for the remainder of the unexpired term. The appointment shall be subject to confirmation by the city council. The appointed judge shall be qualified to hold the position of judge of the municipal court as provided in this chapter and RCW Chapter 3.50, as amended by Chapter 258, Laws of 1984.”

Section 9. Section 2.24.020 of BIMC Chapter 2.24, Police Reserve, is hereby amended as follows:

“2.24.020 Membership– Application and qualifications.

Each applicant must file an application with the chief of police, indicate his willingness to serve an average or minimum of 18 hours per month in the public service, meet the qualification and requirements prescribed for membership in the police reserve force, complete any training program created by the city and be appointed by the chief of police, with the concurrence of the city manager mayor, take an oath of office and be sworn in. Members of the police reserve force are to be citizens of the United States, trustworthy, and of good moral character, and not have been convicted of a felony or any offense involving moral turpitude.”

Section 10. Section 2.28.060 of BIMC Chapter 2.28, Police Civil Service, is hereby amended as follows:

“2.28.060 Appointing power.

The appointing power for the position of the chief of police shall be the city manager mayor of the city with the concurrence of the city council. All other positions shall be appointed by the chief of police but only with the concurrence of the city manager mayor of the city.”

Section 11. Section 2.38.020 of BIMC Chapter 2.38, Hearing Examiner, is hereby amended as follows:

“2.38.020 Appointment– Term – Removal – Duties.

The hearing examiner shall be appointed by the ~~city manager~~~~mayor~~, confirmed by the city council, and shall serve for a term of two years. The appointed hearing examiner shall be removed only (1) upon conviction of a gross misdemeanor or felony, (2) because of physical or mental disability rendering the hearing examiner incapable of performing the duties of the office, (3) upon conviction of a violation of BIMC 2.38.030, or (4) upon conviction of a violation of Chapter 42.23 RCW, the violation of which shall constitute a misdemeanor under this code. The duties of the hearing examiner shall be as established by the city council by ordinance.”

Section 12. Section 2.38.025 of BIMC Chapter 2.38, Hearing Examiner, is hereby amended as follows:

“2.38.025 Hearing examiner responsibilities and duties.

A. 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. The hearing examiner shall issue decisions or recommendations based on relevant ordinances, regulations, policies, statutes, and other authorities.

B. Duties. In addition to any other duty established by ordinance, the hearing examiner:

1. Supervises and evaluates the work of employees as required.
2. Develops procedural rules for the scheduling and conduct of hearings and related matters. Such rules shall be kept on file with the office of the city clerk.
3. Reviews properties that are the subject of hearings to become familiar with the terrain and relationships to other properties.
4. Receives and examines hearing related documents, and reviews case files, city codes and policies, environmental impact statements, plot plans and topographical maps.
5. Evaluates testimony and evidence, prepares records, enters final written findings, and imposes conditions to conform projects to city ordinances and land use policies.

6. Maintains knowledge of current relevant state and city land use laws, policies and related state and federal court decisions.

7. Prepares reports and correspondence to the city manager~~mayor~~, city council, and planning commission as requested.

8. Prepares and submits annual written reports to the city manager~~mayor~~ and city council, including how many hearings have been conducted, the final outcome of hearings, the time required to issue decisions and the cost of hearings.

9. Meets with the city manager~~mayor~~, city council, planning commission and staff as requested, to identify conflicts in the code.

10. When necessary, recommends candidates for pro tem hearing examiner, for approval by the city manager~~mayor~~."

Section 13. Section 2.46.040 of BIMC Chapter 2.46, Harbor Commission, is hereby amended as follows:

"2.46.040 Harbormaster- Position.

The position of harbormaster shall be filled by appointment by the city manager~~director of planning and community development~~. The appointment shall be made from a list of qualified candidates. The harbormaster shall serve at the pleasure of city manager~~the director of planning and community development~~. The purpose of the harbormaster position is to work in concert with the harbor commission to implement the harbor management plan and manage and protect the waters of Bainbridge Island."

Section 14. Section 2.50.010 of BIMC Chapter 2.50, Health, Housing, and Human Services Council, is hereby amended as follows:

"2.50.010 Designation of health, housing, and human services council.

Effective March 1, 1994, the Bainbridge Island health, housing, and human services council, a non-profit corporation of the state of Washington is designated by the city council as the official body of the city empowered to act on all matters pertaining to the development and delivery of health, housing, and human services within the city consistent with the provisions of this chapter. The purpose of the council shall be to support services and foster appropriate improvements in the range and quality of health, housing, and human service programs provided in the city, to ensure access to all in need, and to facilitate service delivery sensitive to the cultural perspectives of those in need; the city

~~manager~~administrator or his or her designee shall be a member of the council. This chapter and Chapter 3.86 BIMC shall not apply to nor affect the contract between Bremerton-Kitsap County health district and the city of Bainbridge Island for delivery of the district's specified health services."

Section 15. Section 2.64.020 of BIMC Chapter 2.64, Collection of Information to Legislative and Administrative Bodies, is hereby amended as follows:

"2.64.020 Authority to designate city employees for informational activity.

The ~~city manager~~mayor or, in the mayor's absence, the ~~deputy mayor~~ is authorized to designate city employees or representatives to collect, accumulate and analyze information concerning the effect of enacted legislation or the anticipated effect of proposed or pending legislation, to consult with the employees or representatives of other municipalities or counties and associations thereof, to respond and provide data and information and give testimony to state legislators, legislative committees, state administrative officers, or other municipalities investigating the city's experience or anticipated costs, benefits or problems from such enacted or proposed legislation."

Section 16. Section 2.64.030 of BIMC Chapter 2.64, Collection of Information to Legislative and Administrative Bodies, is hereby amended as follows:

"2.64.030 Authority of representatives restricted.

In all matters in which an official, staff employee, or other representative appears on behalf of the city, such representative shall observe, carry out or support the known relevant policies of the respective city council and shall consult with the ~~city manager~~mayor or the city council for advice and guidance when required. All such informational activity shall be conducted with prudence and good judgement and within all legal regulation of such activity. Such representative shall not have any authority to make any statements, commitments or promises binding upon the city, but may speak to influence the passage, defeat or amendment of legislation affecting the city in accordance with the policy or position approved by the city council."

Section 17. Section 2.80.110 of the Bainbridge Island Municipal Code is hereby amended as follows:

"2.80.110 Administrative rules.

The city ~~manager~~administrator, upon recommendation of the city clerk, may issue rules for the implementation of this chapter."

Section 18. Section 3.24.020 of the Bainbridge Island Municipal Code is hereby amended as follows:

“3.24.020 Administration.

The equipment rental fund shall be administered by the director of finance and administrative services under the direction of the city manager~~mayor~~.”

Section 19. Section 3.52.060 of the Bainbridge Island Municipal Code is hereby amended as follows:

“3.52.060 Contracts with state authorized.

~~The mayor of Poulsbo and the mayor of Bainbridge Island are each~~ city manager is authorized to execute a contract or contracts with the Department of Revenue of the state for the administration and collection of the tax imposed by Section 3.52.010; provided, that the city attorney shall first approve the form and content of said contract.”

Section 20. Section 3.60.050 of the Bainbridge Island Municipal Code is hereby amended as follows:

“3.60.050 Contract with state authorized.

The city manager~~mayor~~ is authorized to enter into any appropriate contract or contracts with the Department of Revenue of the state for administration and collection of the tax.”

Section 21. Section 3.64.050 of the Bainbridge Island Municipal Code is hereby amended as follows:

“3.64.050 Authorizing execution of contract for administration.

~~The mayor and clerk~~ city manager is are authorized to enter into a contract or contracts with the Department of Revenue for the administration of this tax.”

Section 22. Section 3.72.070 of the Bainbridge Island Municipal Code is hereby amended as follows:

“3.72.070 Public works– Formal bids.

Whenever the estimated costs of a public works project, including materials, supplies, equipment and associated labor, will exceed the

limitations set forth in RCW 39.04.155, as now existing or as hereafter amended, the same shall be done by contract awarded pursuant to the following formal bid procedure:

A. Staff shall prepare bid specifications for completion of the public works project upon prior authorization by the city council.

B. Calls for sealed bids shall be published in the official newspaper, or a newspaper of general circulation most likely to bring responsive bids, at least 13 days prior to the last date upon which bids will be received.

C. Calls for sealed bids will be posted in the same manner as ordinances.

D. Calls for bids shall contain the following information:

1. The general nature of the work;
2. A statement that the plans and specifications for the work are on file and available for public inspection at the City Hall;
3. Instructions that bids must be sealed and filed with the city before a specified date;

4. Instructions that bids must be accompanied by a bid deposit of at least five percent of the amount of the bid in the form of a cashier's check, postal money order or surety bond made payable to the city. Calls for bids shall specify that no bids will be considered without the required deposit.

E. Bids shall be opened on the date and time and at the place specified in the bid specifications, advertisements and public notices.

F. Staff shall prepare bid tabulation sheets and shall recommend that the contract be awarded to the bidder determined to be the lowest responsible bidder who meets the terms of the specifications, conditions and qualifications of the call for bids. Alternatively, staff may recommend the rejection of any or all bids received.

G. The city council shall review the bids, specifications and related materials, together with the staff recommendation, and may award the contract to the lowest responsible bidder. Alternatively, the city council may reject any or all submitted bids and may make a further call for bids in the same manner as the original call.

H. If no bids are received on the first call, the city council may elect to re-advertise and make a second call for bids or may enter into a contract without any further call or may perform the work or improvement by day labor.

I. Amendments or Change Orders.

1. Amendments or change orders to contracts requiring city council approval under this chapter may be administratively approved by the city manager~~mayor~~ if the changes are:

- a. Within the scope of the original contract;
- b. Consistent with an initial bid process, if any;
- c. Executed in writing;
- d. Within the budgeted amount for the projects; and
- e. An increase of the contract award amount (CAA) as follows:

Contract Award	Percentage Increase in CAA	Limits
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Amount	(the greater of)	
Less than \$100,000	30% or minimum	Min. \$0 Max. \$30,000
\$100,000 to \$500,000	20% or minimum	Min. \$30,000 Max. \$100,000
Greater than \$500,000	10% or minimum	Min. \$100,000 Max. \$250,000

2. The value of all change orders to a single contract shall be aggregated. When any single change order, or combined change orders to the same project or single purchase exceeds the value limit, the change must be approved by the city council, except in the following instances:

a. On service contracts used to accomplish an ongoing city program as opposed to completing a short term project or purchase, change order rules, including the aggregate rule, shall be applied on an annual basis.

b. Where the size of the contract and the exhausting of change order authority make further change order authorization impractical, the city council may, upon recommendation of the city manager~~mayer~~, extend the aggregate limits of subsection I.1 of this section for specific contracts.

c. The public works director shall provide reports on public works project change orders to the city council during the normal budget process.

3. A work change directive may be used to:

a. Authorize and direct work that will result in an increase in contract price within the administrative authority of the city manager~~mayer~~ as provided in subsection I.1 of this section for specific contracts. Work change directives that affect the contract price shall be incorporated into a change order.

b. Authorize and direct work that will result in an increase in contract price in excess of the administrative authority of the city manager~~mayer~~ as provided in subsection I.1 of this section, where unforeseen conditions necessitate an immediate change to avoid a contractor's claim against the

city for delays. The work change directive shall be incorporated into a change order and presented to the city council as soon thereafter as practicable.

c. Authorize and direct emergency work that may result in an increase in contract price in excess of the administrative authority of the city manager~~mayor~~ as provided in subsection I.1 of this section, where public health, safety and welfare are endangered. The work change directive shall be incorporated into a change order and presented to the city council as soon thereafter as practicable.

The city council will be notified of work change directives issued in excess of the administrative authority of the city manager~~mayor~~ as soon as practicable.

Section 23. Section 3.73.010 of the Bainbridge Island Municipal Code is hereby amended as follows:

“3.73.010 Authority to accept conveyance of any interest in real property on behalf of the city.

The city manager~~administrator~~, the director of public works, and the director of planning and community development are each authorized to accept, on behalf of the city, dedications, easements, rights-of-way, fee estates or other interests in real property for use by or on behalf of the city. Pursuant to this authority, the city manager~~administrator~~, the director of public works, or the director of planning and community development are each authorized to sign and accept delivery of real property acquisition documents on behalf of the city.”

Section 24. Section 3.80.040 of the Bainbridge Island Municipal Code is hereby amended as follows:

“3.80.040 Designated agency.

A. The Bainbridge Island Arts and Humanities Council, a nonprofit Washington corporation, is designated to carry out the duties set forth in this chapter relating to public art. The designated agency shall follow the guidelines for implementing public art projects adopted by the city council by resolution.

B. Duties and Responsibilities as to Public Art.

1. The designated agency shall review all municipal construction and improvement projects, as adopted by the city council, to determine which projects should be recommended to the city council to include public art, and to anticipate the source and amount of funds to be provided for public art. The designated agency may, with the permission of any affected

public agency or entity, review any real property or building within the city to determine whether it should be recommended to the city council to include public art, if the real property or building is (a) owned or leased by the city or any other public agency or entity, or (b) owned by a nonprofit corporation and operated by a public agency or entity and the placement of art will be pursuant to an interlocal agreement between the city, the nonprofit corporation, and the public agency or entity.

a. For public art anticipated to cost less than \$10,000, the designated agency shall submit a proposal, including a proposed site and budget, to the designated city council committee which is authorized to approve expenditures of up to 30 percent of the estimated total project cost for such things as project administrative funding and full project concept development. If the total cost of project administration plus full project concept development is anticipated to exceed 30 percent of the estimated total project cost, approval of the full city council will be required. The designated agency shall keep the council committee informed with regular progress reports on the public art. The designated agency shall present the recommended public art concept to the city council for final funding approval. The city council may approve or disapprove the proposal as submitted, or may determine to hold a public hearing on the proposal. Following the public hearing, if any, the city council shall approve or disapprove the proposal.

b. For public art anticipated to cost \$10,000 or more, the designated agency shall submit a proposal, including a proposed site and budget, to the designated city council committee. The council committee shall present the proposal to the city council and request that the council approve the cost of project administration and/or full project concept development. The designated agency shall keep the council committee informed with regular progress reports on the public art. The designated agency shall present the recommended public art concept to the city council for final funding approval. The city council may approve or disapprove the proposal as submitted, or may determine to hold a public hearing on the proposal. Following the public hearing, if any, the city council shall approve or disapprove the proposal.

For the purpose of this subsection, the term "full project concept development" means that the project is defined to the point where the city council or members of the public can comprehend the project and be in a position to approve the project completion.

2. The designated agency shall advise the city manager~~mayor~~ and city council on matters pertaining to cultural and artistic endeavors, projects, acquisition of funds, and expenditures in which the city becomes involved and shall act as the representative of the community in such matters."

Section 25. Section 3.82.020 of the Bainbridge Island Municipal Code is hereby amended as follows:

“3.82.020 Establishment of Bainbridge Island arts and humanities account.

All public and private funds authorized, appropriated, or received by the city for the arts and humanities, pursuant to BIMC 3.82.030 shall be maintained in a separate account within the city’s cultural resources subfund designated the “Bainbridge Island Arts and Humanities Account”. ~~The mayor and the city council finance committee shall approve all expenditures from the Bainbridge Island arts and humanities account upon the advice and recommendation of the designated agency.”~~

Section 26. Section 3.84.010 of the Bainbridge Island Municipal Code is hereby amended as follows:

“3.84.010 Procedures.

All claims or other obligations of the city which are payable out of solvent funds, shall be paid by the issuance of a bank check or warrant; provided, that no check shall be issued when the applicable fund is not solvent at the time payment is ordered, but a warrant shall be issued instead. All checks shall be drawn on funds deposited with American Marine Bank. Two signatures of the following officers of the city shall validate a check: ~~mayor, deputy mayor, city manager~~administrator, finance director, city clerk, city treasurer, deputy city clerk and deputy city treasurer accounting manager, budget manager, and senior accountant.”

Section 27. Section 3.86.020 of the Bainbridge Island Municipal Code is hereby amended as follows:

“3.86.020 Establishment of health, housing, and human services account.

All public and private funds authorized, appropriated, or received by the city for health, housing, and human services, pursuant to Section 3.86.030 shall be maintained in a separate account within the city’s social services sub-fund designated the “Bainbridge Island health, housing, and human services account”. ~~The mayor and the city council finance committee shall approve all expenditures from the Bainbridge Island health, housing, and human services account upon the advice and recommendation of the designated agency.”~~

Section 28. Section 5.06.200 of the Bainbridge Island Municipal Code is hereby amended as follows:

“5.06.200 Public disclosure– Confidentiality – Information sharing.

A. For purposes of this section, unless a different meaning is clearly established by context, the following definitions apply:

1. "Disclose" means to make known to any person in any manner.
2. "Tax information" means:
 - a. A taxpayer's identity;
 - b. The nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemption, credits, assets, liability, net worth, tax liability deficiencies, over assessments, or tax payments, whether taken from the taxpayer's books and records or any other source;
 - c. Whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing; or
 - d. Other data received by, recorded by, prepared by, or provided to the director with respect to a taxpayer; provided, that tax information shall not include data, material, or documents that do not disclose information related to a specific or identifiable taxpayer.

B. Tax returns and information may be "public records" as that term is defined in RCW 42.17.020. The director shall not disclose tax information if disclosure would violate Chapter 42.17 RCW or any other law prohibiting disclosure.

C. Reserved.

D. Tax information may be disclosed to the following:

1. The city manager~~mayor~~, ~~city administrator~~, members of the city council, city attorney, city clerk, or their authorized designees, for official purposes;
2. Any agency or officer of the United States of America, the state of Washington, or a tax department of any state, county, city or town; provided, that the agency or officer grants substantially similar privileges to the city, and further provided that the agency or officer shall not further disclose the tax information except as authorized in this section;
3. The taxpayer to whom it pertains or to such person or persons as the taxpayer may designate in writing as the taxpayer's designee; except that tax information not received from the taxpayer shall not be so disclosed if the director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the taxpayer or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered

into by the director that provides for the reciprocal exchange of information with other government agencies, which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court.

E. Nothing in this section shall prevent the use of tax information by the director or any other agency in any civil or criminal action involving any license, tax, interest, or penalty.

F. A person disclosing tax information to a person not entitled to receive that information under this section is guilty of a misdemeanor, and if the person violating this privacy requirement is an officer or employee of the city, such person may be required to forfeit their office or employment.”

Section 29. Section 6.04.010 of the Bainbridge Island Municipal Code is hereby amended as follows:

“6.04.010 Definitions.

For the purpose of this title, the following words shall have the following meanings unless the context indicates otherwise:

1. “Abandonment” means the owner has left the animal for a period of 24 hours without making effective provisions for its proper care.
2. “Adequate shelter” means a moisture proof and wind proof structure that allows the animal to turn around freely, sit easily, stand and lie normally, and that keeps the animal clean, dry and comfortable.
3. “Altered” means any spayed female or castrated male dog or cat.
4. “Animal” means any living vertebrate creature, including reptiles or birds, and excepting man, marine mammals, and fish.
5. “Animal control authority” means the department or officer of the city appointed by the city manager~~mayor~~, or the person appointed by the city council to carry out the duties of an animal control authority or animal control officer under this title.
6. “Animal rescue league” means any association or corporation which routinely obtains unwanted dogs or cats, the primary goal of which is to place the dogs or cats into adoptive homes, as long as the dogs or cats are neutered.
7. “Animal shelter” means a licensed facility used to care for homeless or unwanted animals by a governmental entity, animal welfare society or other organization devoted to the welfare, protection and humane treatment of animals.
8. “At large” means off the owner’s premises and/or out of visual contact of the owner unless under physical and/or immediate effective voice or signal control of a competent person.
9. “Boarding kennel/cattery” means a kennel or cattery where dogs or cats are boarded or trained for compensation, except a pet shop, animal shelter

or veterinary hospital where the boarding is incidental to the primary purpose of the facility.

10. "Cat" means and includes female, spayed female, male and castrated male cats.

11. "Commercial kennel" means a kennel or cattery where adult dogs or cats are bred for compensation.

12. "Dangerous" means an animal that according to the records of the animal control authority: (a) has inflicted severe injury on a human without provocation while on public or private property; (b) has killed a domestic animal without provocation while off the owner's property; or (c) has been previously found to be potentially dangerous, the owner has received notice of such potential and the animal subsequently aggressively bites, attacks or endangers the safety of humans or domestic animals. This definition shall not include a police dog as defined in RCW 4.24.410.

13. "Dog" means and includes female, spayed female, male and castrated male dogs.

14. "Foster home" means a temporary home with a permit approved by the animal control authority to house lost, abandoned or unwanted dogs and cats until an adoptive home is located.

15. "Grooming parlor" means a facility with the primary function to bathe, clip or comb animals for compensation for hygienic or aesthetic reasons.

16. "Hobby kennel" means a noncommercial kennel at or adjacent to a private residence where adult dogs or cats are maintained for purposes other than breeding.

17. "Impound" or "impoundment" means an authorized official taking control of any animal found to be in violation of this title pursuant to the terms of this title.

18. "Inhumane treatment" means every act, omission or neglect whereby unnecessary or unjustified physical pain or suffering is caused or permitted.

19. "Neglect" means the failure to provide proper food, potable water, adequate shelter, opportunity for exercise, or other care normal, usual, and proper for an animal's health and well being.

20. "Owner" means any person owning, keeping, having an interest in, or having control, custody or possession of, an animal.

21. Repealed by Ord. 2003-22.

22. "Pet shop" means a commercial establishment which acquires animals by purchase for the purpose of resale, except farms.

23. "Provocation" means teasing, taunting, striking or other like action, or the unauthorized entry onto the premises where an animal is kept.

24. "Potentially dangerous" means an animal that when unprovoked: (a) chases or approaches a person upon the streets, sidewalks, or any other public grounds in a menacing fashion or apparent attitude of attack; (b) causes injury to or otherwise threatens the safety of a human or domestic animal; or (c) inflicts a bite upon a human or domestic animal either on public or private property.

25. "Secure enclosure" means a chain link enclosure consisting of secure sides and a secure top, or if without a top, having sides which are at least eight feet high, and with a floor permanently attached to the sides, or having sides which are embedded at least one foot into the ground, and which is constructed of such material and closed in such manner that the animal cannot exit on its own."

Section 30. Section 8.24.040 of BIMC Chapter 8.24, Use of Nonbiodegradable Packing Materials, is hereby amended as follows:

"8.24.040 Rules and regulations.

The city ~~manager~~~~administrator~~ charged with the enforcement of this chapter shall be authorized from time to time to adopt reasonable rules and regulations for its implementation, which shall be consistent with these provisions."

Section 31. Section 9.25.030 of BIMC Chapter 9.25, Uninvited Solicitation, is hereby amended as follows:

"9.25.030 Rules and regulations.

The city ~~manager~~~~mayor~~ is authorized to promulgate rules and regulations pursuant to this section to enforce procedures adopted herein."

Section 32. Section 9.40.060 of BIMC Chapter 9.60, Property – Crimes Relating To, is hereby amended as follows:

"9.40.060 Reward for information leading to arrest.

A. The city council is authorized to offer a reward of not to exceed \$1000 for information resulting in the arrest and conviction of any person knowingly and maliciously causing physical damage to any public property within the city.

B. Recommendations for payment of such rewards including recommendations as to the amounts to be paid and the person or persons to whom payment should be made, shall be made by the police chief to the ~~mayor and city council~~, and when approved by the ~~mayor and city council~~, shall be paid from budgeted funds available for such purpose."

Section 33. Section 9.40.060 of BIMC Chapter 9.60, Property -- Crimes Relating To, is hereby amended as follows:

"10.08.210 Administration.

A. The city manager shall establish administrative procedures for the administration of parking pursuant to the provisions of this chapter including, but not limited to, procedures for the issuance of carpool and monthly parking permits.

B. In addition, the city manager~~mayer~~ shall appoint ~~and swear in~~ one or more persons as parking enforcement officers who shall be under the supervision of the police department. The parking enforcement officers shall have authority to issue notices of traffic infractions relating to the parking, standing or stopping of vehicles, but shall not be considered uniformed police officers for purposes of LEOFF and civil service statutes.”

Section 34. Section 10.32.090 of BIMC Chapter 10.32, Impoundment of Vehicles, is hereby amended as follows:

“10.32.090 Contract for towing and storage.

A. The finance director is authorized and directed to prepare specifications for, and documents related to, the selection of tow operators for the towing and storage of vehicles under this chapter. The specifications and documents shall be approved by the city manager~~administrator~~.

B. In awarding a contract to a tow operator, the finance director shall consider, among other relevant factors, the following:

1. General experience in providing towing and storage services;
2. Conduct and performance with a city of similar size and job scope or under a previous city towing contract demonstrating honesty, promptness, skill, efficiency and vehicle owner satisfaction;
3. Existing availability of equipment, facilities, services and personnel;
and
4. Financial ability, storage capacity, location(s), types of services and willingness to improve or expand available equipment, facilities and/or services.

The contract shall be contingent upon proof that the tow operator is properly licensed to do business in the city and registered and licensed by the state in accordance with Chapter 46.55 RCW.

C. Subsequent to award of the contract, the finance director shall file a written statement with the city clerk providing the name, address, telephone number, facsimile number and email address of the contractor and the address of each storage place. The finance director shall administer and enforce the contract.

D. The tow operator shall comply with all applicable laws, ordinances and regulations, including Chapter 46.55 RCW and any regulations promulgated by the finance director for the handling and disposing of towed vehicles. The finance director may cancel the contract upon evidence that the tow operator has failed to comply with such laws, ordinances and regulations.”

Section 35. Section 12.06.120 of BIMC Chapter 12.06, Parades and Assemblies, is hereby amended as follows:

“12.06.120 Appeal procedure.

The applicant shall have the right to appeal a denial of a special event permit, or a condition imposed thereby, including the amount of fees or clean-up deposits imposed pursuant to BIMC 12.06.110, or a determination that the applicant’s certificate of insurance does not comply with the requirements of BIMC 12.06.100. A written notice of appeal shall be filed within 10 days from the date of the denial or conditional approval. The written notice of appeal shall set forth the specific grounds for the appeal and attach any relevant documents for consideration. The city council shall hear the appeal on the record provided from the designated city official and upon public comment given at the scheduled hearing before the council. The hearing shall be scheduled no later than 30 days after receipt of a timely and proper notice of appeal. The decision of the city council on the appeal shall be final.

If there is insufficient time for a timely appeal to be heard by the city council prior to the date on which the event is scheduled, the applicant may, at the applicant’s option, request that the city ~~manager~~administrator hear the appeal. The city ~~manager~~administrator shall hold a hearing no later than five business days after the filing of the appeal and shall render a decision no later than one business day after the hearing on the appeal is closed. If the appeal is requested and heard before the city ~~manager~~administrator, the city ~~administrator~~manager’s decision shall be final.”

Section 36. Section 12.40.080 of BIMC Chapter 12.40, Watercraft and Floating Homes, is hereby amended as follows:

“12.40.080 Resident anchor-out live-aboard vessels.

A. For the purposes of this section, “resident anchor-out live-aboard vessel” (“live-aboard vessel”) means (1) a vessel licensed, if applicable, and designed for use as a mobile structure, with adequate self-propulsion and steering equipment to be operated as a vessel, but which is principally used as an over-water residence; or (2) floats and barges used as residences that were present in city waters on September 7, 1998.

Principal use as an over-water residence means essentially full-time occupancy within the city's jurisdiction for a total of more than 60 days, whether or not consecutive, in any calendar year.

B. Notwithstanding any other provision in this section, the registration, renewal of registration and location requirements of subsections C through I of this section shall not apply to live-aboard vessels that are properly moored or anchored in any private marina.

C. Those live-aboard vessels which were present in city waters on September 7, 1998, or were registered with the city on or before September 7, 1998, shall be permitted to remain in Eagle Harbor pursuant to the conditions and regulations provided by this chapter; provided, that nothing in this chapter shall be construed as limiting, usurping or prejudicing the Washington State Department of Natural Resource's ownership rights in the bedlands of Eagle Harbor or the department's ability to enforce these rights against the otherwise permitted live-aboard vessels in Eagle Harbor; and provided further, that live-aboard vessels which are permitted to remain in Eagle Harbor pursuant to this chapter shall be subject to any further terms and conditions imposed upon the vessels by the city pursuant to any leasehold interest in the Eagle Harbor bedlands that the city may acquire from the Washington State Department of Natural Resources subsequent to the effective date of the ordinance codified in this section. Except as provided by subsection H of this section, an owner of a live-aboard vessel which was not present in city waters on September 7, 1998 or registered with the city as of September 7, 1998, must immediately remove the live-aboard vessel from the waters within the city's jurisdiction.

D. Those live-aboard vessels which are permitted to remain within the city's jurisdiction pursuant to this chapter may anchor or moor only in Eagle Harbor and only at the location or locations designated by the city, as provided in this section. The general anchorage location of permitted live-aboard vessels within Eagle Harbor shall be determined by the city council upon recommendation of the harbor commission. The specific anchorage location of each individual live-aboard vessel shall be determined by the city manager~~administrator~~. The designated anchorage location or locations shall be limited to an area or areas where the presence of the live-aboard vessels shall not compromise the public's interest in water-dependent navigation, commerce, environmental quality and other related considerations.

Until such time as the city designates the general and specific anchorage locations within Eagle Harbor pursuant to this section, the live-aboard vessels permitted to remain in Eagle Harbor pursuant to this chapter shall remain in the location they occupied as of the passage date of the ordinance codified in this section; provided, that any live-aboard vessels which are not located within Eagle Harbor as of the passage date of the ordinance shall move to a location within Eagle Harbor, as designated by the city manager~~administrator~~.

Upon the city's designation of the general and specific anchorage locations of the permitted live-aboard vessels, each owner of a live-aboard vessel shall move the owner's live-aboard vessel to the designated anchorage location within one month of the designation and shall not be permitted to moor or anchor the live-aboard vessel in any other area within Eagle Harbor.

E. The city ~~manager~~~~administrator~~ or the city ~~administrator~~~~manager~~'s designee shall maintain a registration log of those live-aboard vessels permitted to remain within Eagle Harbor pursuant to this chapter. The city's registration log of permitted live-aboard vessels shall annually be renewed by the city clerk during the month of January. At the time of the annual registration update, owners of permitted live-aboard vessels shall pay a registration renewal fee as established by resolution. The registration renewal fee shall be in addition to any lease payment or permit or licensing fee imposed by the state or the city.

F. An owner of a permitted live-aboard vessel who removes the live-aboard vessel from Eagle Harbor for a period longer than 130 consecutive days, as determined by the chief of police or designee, shall forfeit the live-aboard vessel registration privileges under this section; provided, that vessels used for commercial fishing may be absent for a period of 150 consecutive days without forfeiture. Exceptions for absences supported by good cause, including, but not limited to, emergency rebuilds, may be allowed by the city ~~manager~~~~administrator~~ or designee in the city ~~administrator~~~~manager~~'s or designee's discretion.

G. The registration privileges provided by this section are nontransferable and may not be assigned, conveyed or otherwise transferred to another person.

H. The owner of any live-aboard vessel that is not permitted to remain in Eagle Harbor pursuant to subsection C of this section may apply to the city clerk for live-aboard vessel registration privileges. The city clerk shall maintain a waiting list for those additional live-aboard vessels, and any registration privileges issued after the effective date of the ordinance codified in this section shall be on a first-come, first-serve basis. No additional live-aboard vessels shall be permitted to register with the city, or to moor or anchor in Eagle Harbor, unless and until the future number and permitted location of the live-aboard vessels in Eagle Harbor have been determined by the city council.

I. No more than one access float and two dinghies or skiffs per live-aboard vessel shall be permitted. Ownership of the dinghies and skiffs shall be clearly identified; unidentified dinghies and skiffs shall be impounded. The total surface water coverage for a live-aboard vessel and accompanying float and dinghies or skiffs shall not exceed 1,000 square feet.

J. No owner, operator or occupant of any live-aboard vessel shall discharge sewage or dump garbage into the water. All sewage generated upon any live-aboard vessel shall be properly disposed of at a suitable upland sewage facility.

K. Unless otherwise provided by statute, regulation or ordinance, a violation of any provision of this chapter shall constitute a civil infraction punishable by a civil fine not to exceed \$250.00, which shall be enforced as provided in Chapter 1.26 BIMC.

Failure to comply with the provisions of this chapter shall also constitute grounds for the revocation of the live-aboard vessel registration privileges. A notice of revocation of the live-aboard vessel registration privileges shall be in writing, and shall be served upon the owner or operator of the live-aboard vessel by personal delivery or by certified mail, return receipt requested. Any revocation of live-aboard vessel registration privileges may be appealed to the hearing examiner by the owner or operator of the affected live-aboard vessel by filing a written notice of appeal with the city clerk within 15 days after the notice of revocation is served upon the owner or operator. For the purposes of this section, service of the notice of revocation shall be deemed to have been effectuated on the date of personal delivery or three days after the notice is placed in the mail.”

Section 37. Section 13.24.010 of BIMC Chapter 13.24, Storm and Surface Waters, is hereby amended as follows:

“13.24.010 Utility established.

There is created and established a storm and surface water utility. The utility shall be administered under direction of the city manager~~mayer~~ or designee.”

Section 38. Section 13.24.110 of BIMC Chapter 13.24, Storm and Surface Waters, is hereby amended as follows:

“13.24.110 Remedies— Termination of water service.

The city manager~~mayer~~ or designee is authorized to terminate water service to any customer who fails to pay the storm water utility fees imposed by this chapter in the same manner as delinquent water bills. Termination of such water service shall not limit other remedies available to the city.”

Section 39. Section 13.28.080 of BIMC Chapter 13.28, Solid Waste Management, is hereby amended as follows:

“13.28.080 City notification of WUTC tariff filings.

Whenever the certificated hauler files a proposed tariff revision for solid waste and/or recyclables collection rates with the WUTC, the certificated hauler shall simultaneously provide the city manager~~administrator~~ with copies of the proposed tariff and all supporting materials submitted to the WUTC.

- A. The certificated hauler shall transmit the proposed tariff to the city administrator at least 30 days prior to action by the WUTC.
- B. The city will review the proposed tariffs to determine their compliance with the provisions of this chapter.
- C. The certificated hauler shall notify the city within one week after the tariffs are approved by the WUTC. The notification shall specify the rates approved by the WUTC and the effective dates for the rates.”

Section 40. Section 13.28.180 of BIMC Chapter 13.28, Solid Waste Management, is hereby amended as follows:

“13.28.180 Full program implementation.

A. The city ~~manager~~administrator shall notify the WUTC that the city will exercise its authority to establish service levels for the collection of source-separated recyclables from city residences as specified in this chapter. The program shall be considered fully implemented when the following conditions are met:

1. The certificated hauler has received approval by the WUTC for its tariff filings for recyclables; and
2. The services are available to all who want service. Customers must be able to receive containers within 21 days of a request and receive their first collection within 35 days of a request.”

Section 41. Section 18.37.060 of BIMC Chapter 18.37, Transfer of Development Rights, is hereby amended as follows:

“18.37.060 Determination of development rights from a sending area.

A. An owner of real property desiring to sell or transfer development rights shall submit an application for severance of development rights to the city ~~manager~~administrator. The city ~~manager~~administrator or designee shall determine the form of the application and the information required for a complete application. All, or a portion of, the development rights may be included in the application.

B. The city ~~manager~~administrator or designee shall determine the number of development rights available for severance, subject to BIMC 18.37.030.C.

C. The city shall issue a certificate documenting the number of available development rights.”

Section 42. Subsection (D) of Section 18.117.030 of BIMC Chapter 18.117, Comprehensive Plan Amendment Administrative Procedure, is hereby amended as follows:

"D. Written Analysis. For each proposed amendment, staff (or the lead department, as determined by the city manager~~mayer~~) will prepare a written analysis for the planning commission. The analysis will be accompanied by a recommendation that the proposed amendment be approved, denied, or approved with modification. Proposals may be grouped and evaluated by geographic sector and/or subject matter to be assessed for cumulative impact."

Section 43. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is declared invalid or unconstitutional for any reason, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 44. This ordinance shall take effect and be in force five (5) days after its passage, approval and publication as provided by law.

PASSED by the City Council this 28th day of October, 2009.

APPROVED by the Mayor this 2nd day of November, 2009.



Christopher Snow, Mayor

ATTEST/AUTHENTICATE:

Rosalind D. Lassoff
Rosalind D. Lassoff, City Clerk

FILED WITH THE CITY CLERK:	October 6, 2009
PASSED BY THE CITY COUNCIL:	October 28, 2009
PUBLICATION DATE:	November 6, 2009
EFFECTIVE DATE:	November 11, 2009
ORDINANCE NO.:	2009-21