

ORDINANCE NO. 2010-25

AN ORDINANCE of the City of Bainbridge Island, Washington integrating a mandatory public participation meeting requirement for certain development projects by amending Sections 2.16.035, 17.04.050, 18.38.040, 18.105.045, 18.108.020, and 18.120.020 of the Bainbridge Island Municipal Code.

WHEREAS, the City of Bainbridge Island has the authority to adopt zoning provisions pursuant to RCW 36.70A.390; and

WHEREAS, the City Council has decided that citizens would be better served by increasing the opportunity for public participation when a development project is proposed; and

WHEREAS, the City Council established the Land Use Public Process small steering group on April 7, 2010; and

WHEREAS, the steering group is charged with analyzing and reviewing policies and procedures regarding public involvement in land use permits; and

WHEREAS, the steering group began meeting in May 2010, and quickly identified several ways to better solicit public participation in the land use permit process; and

WHEREAS, upon the recommendation of the steering group, the City Council directed staff to develop an ordinance making the City's "Public Participation Program," as outlined in Resolution No. 2001-11, amended by No. Resolution 2010-32, mandatory for certain larger development projects; and

WHEREAS, on August 26, 2010, the Planning Commission held a public hearing on this chapter to implement the recommendation; and

WHEREAS, pursuant to RCW 36.70A.106, a 60-day notice was sent to the Washington State Department of Commerce on August 20, 2010; now therefore,

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

Section 1. Section 2.16.035 of the Bainbridge Island Municipal Code is amended to read as follows:

2.16.035 Preapplication procedure.

- A. A preapplication conference may be scheduled by the department director for any type of land use application, but is required prior to submitting an application for the following permits:

Regular conditional use;
Regular variance;
Site plan and design review approval;
Preliminary subdivision (long plat) and short subdivision (short plat);
Shoreline substantial development and shoreline conditional use permit;
Planned unit development;
Comprehensive plan amendment; and
Consolidated project review.

- B. A preapplication conference for a conditional use permit, variance, site plan and design review, shoreline substantial development permit or shoreline conditional use permit may be waived in writing by the director of planning and community development if the director determines the following:
1. The application is consistent with applicable codes and ordinances;
 2. The proposed use is clearly listed as a permitted use in the zoning district in which it is located;
 3. The proposal is exempt from review under the State Environmental Policy Act (SEPA); and
 4. The applicant demonstrates knowledge and understanding of the cities permit processing procedures.
- C. An applicant shall arrange for a preapplication conference by submitting forms and plans as prescribed by the applicable land use applications. For Housing Design Demonstration Projects authorized under Chapter 18.38 BIMC, the applicant shall submit additional information for the preapplication conference as outlined in BIMC 18.38.050. As established by the city council by resolution, a fee for a preapplication conference shall be charged.
- D. The preapplication conference is an informal discussion between a potential applicant, interested citizens, city staff, and the Design Review Board (if applicable) regarding a proposed project. A preapplication conference shall not include extensive field inspection or correspondence. The purpose of the preapplication conference is to assist the applicant by identifying the following:
1. Requirements for submittal, including types of permits necessary to complete the proposal and whether SEPA review is required, pursuant to the State Environmental Policy Act (SEPA), Chapter 43.21C RCW.
 2. Compliance with applicable city plans, goals, policies, codes or guidelines and possible revisions to the proposed project which will enhance the proposal with respect to these requirements.

3. Required plans, studies, reports, and/or other materials specific to the proposal which will provide necessary information for staff to review the project.
 4. If applicable, whether or not the project will likely qualify as a Housing Design Demonstration Project, and/or feedback about how to qualify.
- E. The discussion at the preapplication conference shall not bind or prohibit the city's future application or enforcement of applicable codes and ordinances.

F. As outlined in BIMC 17.04.050, 18.105.045, 18.108.020, and 18.120.020, the review process for Subdivisions, non-administrative Site Plan and Design Review permits, regular Conditional Use Permits, and Planned Unit Developments shall include a public participation meeting following the procedures outlined in Resolution No. 2010-32. The meeting will be held after the Design Review Board meeting, if one is required, during the preapplication conference phase of the project.

Section 2.
follows:

Section 17.04.050 of the Bainbridge Island Municipal Code is amended to read as

17.04.050 Subdivisions – Process overview.

- A. All residential subdivisions shall be designed consistent with the flexible lot design process and the flexible lot standards described in this chapter and shall follow the steps described in subsection C of this section.
- B. For the purposes of this chapter, subdivisions proposed to exclusively accommodate commercial, multifamily, or a combination of commercial and multifamily uses (mixed use) shall be consistent with the procedures and standards established by BIMC 17.04.085 and shall follow the steps described in subsection C of this section.
- C. All subdivision applications shall follow the following steps:
 1. Proposed site plan(s) and additional information as required by this chapter and Appendix B(1) of this title for the project shall be submitted for a preapplication conference in accordance with BIMC 2.16.035. Applicants are required to participate in a community meeting through the City's Public Participation Program outlined in Resolution No. 2010-32. The meeting will be held during the preapplication conference phase of the project.
 2. A refined proposed site plan consistent with the submittal requirements of this chapter and additional materials as required by the director and/or identified in the preapplication letter are submitted for the preliminary subdivision application review process;

3. An application for preliminary subdivision is considered complete and is filed by the city if it satisfies the submittal requirements set forth in BIMC 17.04.091;
4. The preliminary subdivision application is reviewed consistent with BIMC 17.04.094 and as described in Chapter 2.16 BIMC;
5. A preliminary plat is approved, disapproved, or returned to the applicant for modification or correction within 90 days from the date of filing a complete application, unless the applicant consents to an extension;
6. At any time within five years following the date of the preliminary subdivision approval by the city council, the subdivider may submit the original of a proposed final subdivision consistent with the final subdivision submittal requirements of this chapter;
7. The final subdivision application is reviewed by the city council within 30 working days from the date of filing a complete application, unless the applicant consents to an extension;
8. The final subdivision becomes effective upon recording by the city

Section 3.
follows:

Section 18.38.040 of the Bainbridge Island Municipal Code is amended to read as

18.38.040 Review & Approval Process

Housing Design Demonstration Project applications shall be reviewed as specified in Chapter 2.16 BIMC given the underlying land use permit, with additional review as outlined in this section.

- A. **Conceptual Proposal Review.** Applicants proposing a demonstration project shall meet with city staff during the conceptual phase to discuss the goals and evaluation parameters of the proposed project. The conceptual proposal review is an informal discussion between the applicant and city staff regarding a proposed project. There are no required application materials for this stage. Applicants shall contact the Planning Department staff to request a meeting, and the meeting shall be scheduled by staff for no more than three weeks after the request date. The purpose of the conceptual proposal review is to determine if the proposal is eligible to be considered as an application for Housing Design Demonstration Project and to assist the applicant by identifying the following:
 1. Requirements for submittal, including types of supplemental materials for application.
 2. Compliance with applicable city plans, goals, policies, codes, or guidelines and possible revisions to the project which will enhance the proposal with respect to these requirements.
 3. Areas of Title 18 *Zoning*, or Title 17 *Subdivisions* which the applicant seeks flexibility.

4. Required plans, studies, reports, and/or other materials specific to the proposal which will provide necessary information for staff and the Design Review Board, and to review the project under the criteria outlined in BIMC 18.38.060.

B. ~~Public Participation Program. The applicant is required to participate in one or more community meetings, either through the City's 1) Public Participation Program following the procedures outlined in Resolution No. 2010-32 2001-11, or 2) an equivalent public meeting that includes participation by city staff, as approved by the director.~~

C. Preapplication Conference. The applicant shall apply for a preapplication conference pursuant to BIMC 2.16.035. Housing Design Demonstration Projects shall be reviewed by both staff and the Design Review Board, pursuant to BIMC 2.48.050.

1. Housing Design Demonstration Project Evaluation. The applicant shall submit a HDDP proposal consistent with the requirements outlined in BIMC 18.38.050. The applicant shall consider input received from ~~the~~ during the public meetings and conceptual review with city staff in ~~the~~ crafting the proposal. The proposal will be evaluated pursuant to BIMC 18.38.060 by city staff and the Design Review Board at one Board meeting. The evaluation factors outlined in BIMC 18.38.060 shall be evaluated by the following parties:

- a. Housing Diversity: to be evaluated by the director.
- b. Innovative Site Development Practices: to be evaluated by the director and Design Review Board.
- c. Innovative Building Design Practice: to be evaluated by the director.

The Director of Planning and Community Development shall prepare written findings of facts. Applicants will receive preliminary notification from the director whether the proposal qualifies as a Housing Design Demonstration Project, or feedback about how to improve the proposal to qualify. Any changes to the proposal would be reviewed through an additional preapplication conference. If the proposal is significantly altered, another preapplication conference may be required.

D. Application Submittal. An applicant may submit a land use application for a Housing Design Demonstration Project after completion of a required conceptual and preapplication review and notification by the city that the proposal qualifies as a HDDP. The applicant shall submit an application as specified in BIMC

18.38.030. Upon receipt of an application, the director shall provide notice to the applicant and public in accordance with BIMC 2.16.085, and commence the application review process.

- E. Planning Commission Review. The Planning Commission may review HDDP projects at a public meeting pursuant to BIMC 2.16.120 *Consolidated Project Review* given the underlying land use permit.
- F. Permit Decision. The decision to approve or deny a Housing Design Demonstration Project shall be made as part of underlying land use permit approval. The decision shall be based upon the decision criteria of the underlying planning permit, and the decision criteria outlined in BIMC 18.38.070. Housing Design Demonstration Project approval conditions shall be included in the final permit approval and shall address any ongoing compliance requirements including compliance with approved design plans.
- G. Appeal of the Decision. A decision on a Housing Design Demonstration Project may be appealed under the provisions of Chapter 2.16 BIMC as part of any appeal of the underlying land use permit.
- H. Project Certification
 - 1. Building Permit. The applicant shall submit a building permit that is consistent with all conditions of the land use permit approval. The applicant shall also submit documentation that the project has applied for certification by a green building rating system, such as Evergreen Sustainable Development, LEED or BuiltGreen. Proof of ongoing certification shall be required during construction and project certification must be completed prior to final occupancy.
 - 2. Living Building Challenge. For projects pursuing the Living Building Challenge pursuant to BIMC 18.38.050.J, the applicant must show proof of pursuing ongoing certification during construction for all required elements. After construction and prior to issuance of the certificate of occupancy, the applicant must show proof of initial project compliance as to the Site, Materials, Indoor Quality and Beauty/ Inspiration components of the Living Building Challenge and that the project is likely to achieve the elements of energy and water following 12 months of occupancy as required under Living Building Challenge certification. For those elements of energy and water that require occupancy of the building for twelve months for Living Building Challenge certification, the applicant must submit a report to the City following 12 months of occupancy, demonstrating its progress

towards meeting these remaining elements of the Living Building Challenge standard. If certification of those elements has not been achieved, the applicant must provide quarterly reports of progress towards certification of these elements, including additional steps and timeline that will be taken to achieve certification.

Section 4.
as follows:

Section 18.105.045 of the Bainbridge Island Municipal Code is amended to read

18.105.045 Design process.

The city shall process a site plan and design review application in accordance with BIMC 2.16.095 and the following procedures:

- A. Preapplication Conference with the Development Review Committee.
 - 1. To assist in review processing, an applicant for a site plan and design review shall meet with the development review committee at a required preapplication conference in accordance with the purpose and procedures of BIMC 2.16.035.
 - a. An applicant shall first conduct a site analysis identifying existing watercourses/wetlands, significant trees and vegetation, critical areas and other natural features, open space in accordance with the design process, and development standards of BIMC 18.72.050, if applicable.
 - b. A prospective applicant for a site plan and design review proposal shall prepare maps, site plan(s) and studies (as specified in BIMC 18.105.055) that show how the proposal promotes the purpose of this chapter and meet the standards of the zoning district and this chapter.
 - 2. A preapplication conference may not be necessary for some minor site plan and design review proposals, in which case the conference may be waived by the director in accordance with BIMC 2.16.035.B.
 - 3. An applicant for a non-administrative Site Plan and Design Review permit is required to participate in a community meeting through the City's Public Participation Program outlined in Resolution No. 2010-32. The meeting will be held after the Design Review Board meeting during the preapplication conference phase of the project.
 - 4. Within 14 days of a preapplication conference, the development review committee shall notify the applicant in writing whether the proposal will likely require planning commission review.
- B. An applicant may submit an application for site plan and design review at any time after completion of a required preapplication conference. The applicant shall submit a complete application as specified in BIMC 18.105.055. Upon receipt of a complete application, the director shall provide notice to the applicant and public in accordance with BIMC 2.16.085, and commence the application review process. A notice of application with public comment period, and a notice of decision shall be

required in accordance with BIMC 2.16.085.C and E, for all site plan and design review applications.

C. Application Review.

1. A site plan and design review application for minor projects may be reviewed by the development review committee (DRC), as determined by the director. The final decision on an application is made by the director.
 - a. Upon receipt of a complete application, the director may determine, based on the complexity of the proposal, that it is appropriate that the DRC review the application. The DRC shall consider the application at a meeting and make a recommendation to the director.
 - b. The director will make the final decision based on the following:
 - i. The recommendation of the DRC, if applicable;
 - ii. Consideration of any public comments received; and
 - iii. The decision criteria, BIMC 18.105.060.
2. A site plan and design review application requiring planning commission review and recommendation shall be reviewed by the development review committee (DRC) and the planning commission prior to the final decision by the director.
 - a. The director shall forward a completed application to the DRC.
 - b. The development review committee shall consider the application at a meeting and make recommendation to the director.
 - c. The director shall review the DRC recommendation and determine the major issues and specific aspects of the project which the planning commission should review. The director will forward this review directive alone with the DRC recommendation to the planning commission.
 - d. The planning commission shall review the application in relationship to the director's review directive and the decision criteria. The planning commission shall consider the application at a public meeting and shall forward the recommendation to the director in accordance with BIMC 2.16.095.D.
 - e. The director will make the final decision based on the following:
 - i. The recommendation of the development review committee;
 - ii. Consideration of any public comments received;
 - iii. The recommendation of the planning commission; and
 - iv. The decision criteria, BIMC 18.105.060.

D. Relationship to Other Land Development Applications – Consolidated Project Review.

1. If requested by the applicant, a site plan and design review application which is part of a proposal requiring multiple land use permits may be combined in a consolidated project review. Related applications

requiring a public hearing shall be considered at one public hearing in accordance with BIMC 2.16.120.

2. If a site plan and design review application is part of a consolidated project, the director will review the site plan and design review application as prescribed under subsection C.1 or C.2 of this section, as appropriate, and forward the findings and decision to the appropriate hearing body for any required public hearing.

Section 5. follows:

Section 18.108.020 of the Bainbridge Island Municipal Code is amended to read as follows:

18.108.020 Applicable procedure.

The city shall process conditional use applications in accordance with Chapter 2.16 BIMC and the following procedures:

- A. Preapplication Conference. Prior to submittal of a conditional use permit application, the applicant or applicant's representative shall attend a preapplication conference in accordance with the purpose and procedures of BIMC 2.16.035. A preapplication conference for a minor conditional use permit proposal may be waived by the director in accordance with BIMC 2.16.035.B.
 1. An applicant for a regular Conditional Use Permit is required to participate in a community meeting through the City's Public Participation Program outlined in Resolution No. 2010-32. The meeting will be held after the Design Review Board meeting, if one is required, during the preapplication conference phase of the project.
- B. Application. An applicant may submit an application for a conditional use permit at any time after completion of a required preapplication conference. The applicant shall submit a complete application as specified in BIMC 18.108.030. Upon receipt of a complete application, the director shall provide notice to the applicant and public in accordance with BIMC 2.16.085 and commence the application review process. A notice of application with public comment period and a notice of decision shall be required in accordance with BIMC 2.16.085.C and E for all conditional use permit applications.
- C. Administrative Conditional Use. An administrative conditional use process may be used for minor projects as determined by the director. An administrative conditional use process shall follow the review procedures set forth in BIMC 2.16.095. Minor projects may include but are not limited to:
 1. Projects that are exempt from review under the State Environmental Policy Act (SEPA); or
 2. Uses that are clearly consistent and compatible with other uses in the same zone and vicinity; or

3. Uses specifically listed as a conditional use in the zone in which it is proposed.

- D. Regular Conditional Use. All other conditional use applications shall be processed using the procedures set forth in BIMC 2.16.100, Hearing examiner decision procedures.
- E. Written Comments. An administrative conditional use application that has received written public comments during the notice of application comment period (as set forth in BIMC 2.16.085), 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 may be processed as a regular conditional use permit, as determined by the director.
- F. Review by the Planning Commission. Prior to the final decision on an application, the director or the hearing examiner may remand a proposal to the planning commission for review and recommendation using the procedures set forth in BIMC 2.16.095.D or 2.16.100.C.

Section 6.
as follows:

Section 18.120.020 of the Bainbridge Island Municipal Code is amended to read

18.120.020 PUD-process overview.

- A. All residential PUDs shall be designed consistent with the flexible lot design process and the flexible lot standards described herein. The PUD process as established by this chapter and the flexible lot design process for residential PUDs as incorporated herein provides opportunities for the identification and preservation of areas of aesthetic, environmental and or cultural significance located within the community and helps to maintain visual quality and the character of the Island. The flexible lot design methodology described herein allows for greater flexibility in the location and establishment of residential lots and associated infrastructure and is intended to provide a fair and predictable process for the development of land.
- B. For the purposes of this chapter, PUDs proposed to exclusively accommodate commercial and industrial uses shall be exempt from the requirements of the flexible lot design process; provided, that they are established in strict compliance with all applicable provisions of this code. The PUD process for commercial and industrial PUDs shall be consistent with the procedures and standards established by this chapter and follows the steps described in subsection C of this section.
- C. All PUD application shall follow the following steps:
 - 1. Proposed site plan(s) and additional information for the project, as required by BIMC and Appendix A of this chapter are submitted for a preapplication consultation with the city staff members. Specific

guidance on how to refine the proposed site plan to meet the requirements of the BIMC is received by the applicant from the staff members at this conference. The applicant is required to participate in a community meeting through the City's Public Participation Program outlined in Resolution No. 2010-32. The meeting will be held after the Design Review Board meeting, if one is required, during the preapplication conference phase of the project.

2. A refined proposed site plan consistent with the submittal requirements of this chapter and additional materials as required by the director are submitted for the PUD application review process.
3. An application for PUD is considered complete and is filed by the city if it satisfies the submittal requirements set forth in BIMC 18.120.100.
4. A staff report is prepared and delivered for review by the planning commission.
5. The planning commission makes recommendations to the hearing examiner.
6. The hearing examiner conducts a public hearing and files findings of fact, conclusions of law, and recommendations with the city clerk's office.
7. The city council, at its next available meeting, reviews the application and affirms, modifies or denies the application or remands the application to the hearing examiner for further review.
8. Any person aggrieved by the decision of the council may file an appeal to the Kitsap superior court in accordance with state law.

D. A PUD application shall be reviewed under the laws in effect at the time the application is approved or disapproved.

Section 7. If any section, sentence, clause or phrase of this chapter shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this chapter.

Section 8. This chapter shall take effect on and be in force five days from and after its passage, approval, and publication as required by law.

PASSED by the City Council this 13th day of October, 2010.

APPROVED by the Mayor this 13th day of October, 2010.



Bob Scales, Mayor

ATTEST/AUTHENTICATE:



Rosalind D. Lassoff, City Clerk

FILED WITH THE CITY CLERK:	September 9, 2010
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