

ORDINANCE NO. 2018-45

AN ORDINANCE of the City of Bainbridge Island, Washington, adopted pursuant to RCW 36.70A.390; amending the interim official control, codified as Chapter 16.32 of the Bainbridge Island Municipal Code, to include an application fee and add exceptions to the chapter; leaving the effective date of the interim official control unchanged; adopting a work plan; and extending the duration of the interim official control until June 26, 2019.

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

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

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

WHEREAS, land clearing and development activities have resulted in the removal and loss of Landmark Trees on Bainbridge Island and the City has received numerous public comments expressing concern regarding the loss of Landmark Trees on Bainbridge Island; and

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

WHEREAS, the Planning Commission, Design Review Board, and the Ad Hoc Tree/LID Committee have expressed concern regarding the loss of trees on Bainbridge Island and the preservation of trees is a community value supported by the policies and goals of the City’s Comprehensive Plan; and

WHEREAS, on June 26, 2018, the City Council adopted Ordinance No. 2018-25, which imposed an interim official control in the form of Chapter 16.32 BIMC, *Preservation of Landmark Trees*, which designates Landmark Trees based on size and species, requires a permit to remove any Landmark Tree, and imposes fines if a Landmark Tree is removed without a permit; and

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

WHEREAS, the City Council has previously amended the interim official control adopted by Ordinance No. 2018-25 on August 21, 2018 (via Ordinance No. 2018-32) and again on October 9, 2018 (via Ordinance 2018-42); and

WHEREAS, on October 16, 2018, the City Council authorized the City Manager to contract with a team of arborists to review and make recommendations on City regulations governing tree and vegetation removal, including Chapter 16.32 BIMC; and

WHEREAS, the City Manager has negotiated and executed a contract with the team of arborists and additional time is needed to allow the team of arborists to review the City's regulations and develop recommendations to present to the City Council; and

WHEREAS, following receipt of the arborists' recommendations, additional time will also be needed for the City Council to review the recommendations and consider the potential adoption of such recommendations that are consistent with the vision and goals of the City's Comprehensive Plan; and

WHEREAS, on November 27, 2018, the City Council first discussed Ordinance No. 2018-45; and

WHEREAS, since the landmark tree regulations have been in effect, the City has received comments from many property owners and Puget Sound Energy about difficulty in meeting the landmark tree regulations and therefore, the City proposes to amend the regulations to add exceptions for the type of landmark tree removal that would be approved through permit review; and

WHEREAS, on December 11, 2018, the City Council held a public hearing on Ordinance No. 2018-45, and considered and adopted the work plan that was provided as Exhibit A to this ordinance; and

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

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

Section 1. Findings of Fact. The recitals set forth above are hereby adopted as additional and supplemental findings of fact to the City Council's initial findings of fact in support of the interim official control, as initially established by Ordinance No. 2018-25 and as subsequently amended by Ordinance Nos. 2018-32 and 2018-42.

Section 2. Interim Official Control Amended. A new Section 16.32.015 of the Bainbridge Island Municipal Code is added to read as follows:

16.32.015 Exemptions. In the following circumstances, a "Removal of Landmark Tree" permit shall not be required pursuant to this section:

- A. The tree(s) at issue is/are dead;
- B. For routine maintenance activities required to control vegetation on road, access, or utility rights-of-way or easements, including tree removal, pruning, and thinning; or
- C. For Class II and Class III forest practices regulated by the Washington State Department of Natural Resources under Chapter 76.09 RCW.

Section 3. Interim Official Control Amended. Section 16.32.030.B of the Bainbridge Island Municipal Code is amended to read as follows:

- B. Prior to the removal of a Landmark Tree, any person, corporation, or other legal entity seeking to remove a Landmark Tree must submit an Application for Removal of a Landmark Tree, along with a fee to be established by resolution of the City Council, to the Department of Planning and Community Development.

Section 4. Interim Official Control Amended. Section 16.32.030.D. of the Bainbridge Island Municipal Code is amended to read as follows:

- D. The planning director shall approve the removal, deny the removal, or request additional information. The planning director shall only approve the removal of a landmark tree if all other applicable city regulations are met and upon a finding that at least one of the following criteria is met:
 - 1. The removal is necessary to enable construction on or reasonable use of the property, and no other alternative is feasible; or
 - 2. The removal is necessary to ~~maintain utilities, access, or~~ fulfill the terms of an easement or covenant recorded prior to the adoption of the ordinance codified in this chapter; or
 - 3. The tree is diseased, ~~dead~~, or otherwise determined to be a hazardous tree as determined by a qualified professional pursuant to BIMC 18.15.010.C.1.c.

In deciding whether the removal of a landmark tree is necessary under subsection D.1 or 2 of this section, the planning director shall consider all land use regulations applied to the subject property, such as: Chapter 15.19 BIMC, Site Assessment Review, Chapter 16.12 BIMC, Shoreline Master Program, Chapter 16.20 BIMC, Critical Areas, or any other tree retention regulations applied through a land use permit.

Section 5. Duration of Interim Official Control Extended. The interim official control is hereby amended, as also stated in Section 9 below, to extend the duration of the interim official control until June 26, 2019, six months beyond the current expiration date, which, without this amendment, would be December 26, 2018.

Section 6. Interpretive Authority. The City of Bainbridge Island Director of Planning and Community Development, or designee, is hereby authorized to issue official interpretations arising under or otherwise necessitated by this ordinance.

Section 7. Interim Official Control Work Plan and Hearing. As provided for under RCW 35A.63.220 and RCW 36.70A.390, the City may renew an interim official control for one or more six-month periods if a work plan has been developed, a public hearing has been held, and findings of fact have been made, and the City is hereby extending the interim official control as described herein based on the work plan that has been developed and is attached and incorporated herein as Exhibit A to this ordinance, the public hearing that is being held related to this ordinance, and the findings of fact that have been made in this ordinance and the previous ordinances related to this interim official control.

Section 8. Severability. Should any section, paragraph, sentence, clause, or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 9. No Change to Basis for Declaration of Emergency or Effective Date; Extension of Duration. This ordinance shall take effect and be in force five days from and after its passage and publication as required by law. Provided, that this ordinance is not intended to change the basis of the emergency declaration stated in Ordinance No. 2018-25, which preceded this ordinance. Pursuant to *Matson v. Clark County Board of Commissioners*, 79 Wn. App. 641 (1995), non-exhaustive underlying facts necessary to support this emergency declaration were included in the “Whereas” clauses in Ordinance Nos. 2018-25, 2018-32, and 2018-42, and those “Whereas” clauses are adopted as findings of fact. This ordinance amending the interim official control shall extend the duration of the interim official control for an additional six-month period, until June 26, 2019, unless terminated earlier by the City Council. This ordinance does not change the effective date of the interim official control, which is June 26, 2018. The Council may, at its sole discretion, renew the interim official control for one or more six-month periods in accordance with state law. This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the City.

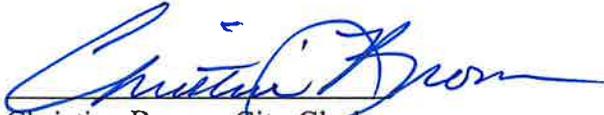
PASSED BY THE CITY COUNCIL this 11th day of December, 2018.

APPROVED BY THE MAYOR this 11th day of December, 2018.



Kol Medina, Mayor

ATTEST/AUTHENTICATE:

A handwritten signature in blue ink, appearing to read "Christine Brown", written over a horizontal line.

Christine Brown, City Clerk

FILED WITH THE CITY CLERK:	November 21, 2018
PASSED BY THE CITY COUNCIL:	December 11, 2018
PUBLISHED:	December 14, 2018
EFFECTIVE DATE:	December 19, 2018
ORDINANCE NUMBER:	2018-45

Attachment: Exhibit A

EXHIBIT A



PROTECTION OF LANDMARK TREES

WORK PROGRAM FOR INTERIM REGULATIONS (December 7, 2018)

ORDINANCE 2018-25 PROTECTION ON LANDMARK TREES:

On June 26, 2018, the City Council adopted Ordinance No. 2018-25, which imposed an interim official control governing the preservation, protection, and retention of Landmark Trees located on Bainbridge Island. The interim official control created a new chapter of the municipal code: Chapter 16.32 BIMC, Protection of Landmark Trees. The interim official control took effect immediately and **remains in effect until December 26, 2018**, unless terminated earlier or extended by the City Council.

Since being adopted, the City Council has twice amended the interim official control adopted by Ordinance No. 2018-25: first on August 21, 2018 (via Ordinance No. 2018-32), and again on October 9, 2018 (via Ordinance 2018-42).

The City has initiated the *Work Program* described below to address the issues related to preservation of larger trees raised by the adoption of the interim regulations set forth in Ordinance Nos. 2018-25, 2018-32, and 2018-42.

Fall 2018

On October 16, 2018, the City Council authorized the City Manager to contract with a team of arborists led by Katy Bigelow and John Bornsworth to review and make recommendations on City regulations governing tree and vegetation removal, including Chapter 16.32 BIMC. The City Manager has negotiated and executed a contract with the team of arborists, and the team's recommendations are expected by the end of December 2018.

January 2019

The City Council will review the final report and recommendations from the consultant arborists. The Council will then provide policy direction to staff about which recommendations to consider. Actions could be code changes that would be processed as an ordinance, first reviewed by the Planning Commission, or recommendations not related to the code such as improved outreach and education materials.

February 2019

After the City Council provides policy direction to City staff, the Planning Commission would review any drafted code changes (via a draft ordinance). After holding a public hearing, the Planning Commission will make recommendations to the City Council on a tree preservation, protection, and retention ordinance.

March-April 2019

The City Council will then review and take action on the proposed ordinance.