ORDINANCE NO. 2018-14

AN ORDINANCE of the City of Bainbridge Island, Washington, adopted pursuant to RCW 35A.63.220 and RCW 36.70A.390; amending Section 3 and of Ordinance No. 2018-05 to amend the activities subject to the moratorium; providing for severability; and leaving the effective date and duration of the moratorium unchanged.

WHEREAS, on January 9, 2018, the City Council enacted Ordinance No. 2018-02 and thereby established a temporary emergency moratorium on the acceptance and processing of certain Permit Applications, as defined in Section 2 of Ordinance No. 2018-02; and

WHEREAS, the City Council and City staff received feedback and comment from individuals related to the moratorium and, based partly on that feedback and comment, the Council determined that certain exclusions to the moratorium needed to be amended to clarify the Council's intent regarding such exclusions; and

WHEREAS, on January 16, 2018, the Council enacted Ordinance No. 2018-03, which amended Ordinance No. 2018-02 to clarify some of the exclusions; and

WHEREAS, the Council and City staff received additional feedback and comment from individuals related to the moratorium and, based partly on that feedback, the Council determined that further amendment was necessary to clarify which types of activities are subject to the moratorium, and which activities are excluded from the moratorium; and

WHEREAS, on February 15, 2018, the Council enacted Ordinance No. 2018-05, which amended and restated Ordinance No. 2018-02 and Ordinance No. 2018-03; and

WHEREAS, based on additional information and consideration related to educational facilities and preschools, as well as related to the applicability of the moratorium in the Mixed Use Town Center/Central Core Overlay District, on March 13, 2018, the Council approved Ordinance No. 2018-09 to further clarify which types of activities are subject to the moratorium, and which activities are excluded from the moratorium; and

WHEREAS, this moratorium was imposed, in part, to allow the Council and City staff adequate time to complete the Critical Areas Ordinance Update process; and

WHEREAS, the Council adopted the Critical Areas Ordinance Update (Ordinance No. 2018-01) on February 27, 2018, and the updated Critical Areas Ordinance takes effect on April 23, 2018; and

WHEREAS, critical areas within the City's shoreline jurisdiction are regulated by the City's shoreline master program (see, e.g., Chapter 16.12 BIMC, RCW 36.70A.480(3)(b)); and

WHEREAS, integration of applicable critical areas regulations into the shoreline master program is essential to ensuring adequate protection of critical areas within the shoreline jurisdiction and no net loss of shoreline ecological functions; and

WHEREAS, regulations for critical areas within the City's shoreline jurisdiction are in the process of being updated through an amendment of the City's shoreline master program consistent with the Shoreline Management Act and, at this time, that amendment process is not expected to be complete before July 9, 2018, which is the date that the moratorium is currently set to expire; and

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

WHEREAS, the moratorium promotes the public good and is necessary for the protection of public health, property, safety, and welfare, and the public emergency on which this moratorium was imposed continues to exist and this ordinance does not change the basis for that declaration of emergency, except as described above, nor the effective date of the moratorium, which is January 9, 2018.

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

Section 1. Findings of Fact. The recitals set forth above are hereby adopted as additional and supplemental findings of fact to the City Council's initial findings of fact in support of the moratorium, as established by Ordinance Nos. 2018-02, 2018-03, 2018-05, and 2018-09.

Section 2. Moratorium Amended. Section 3 of Ordinance No. 2018-05 is hereby amended as follows related to the activities to which the moratorium applies:

B. Structures, buildings, and land use permits and approvals in the R-1, R-2, <u>and</u> R-0.4 ~~, and Business/Industrial~~ zones <u>within the City's shoreline jurisdiction areas (see Chapter 16.12 BIMC)</u>:

(i) That will result in less than 65% of the subject property being retained as native vegetation; or

(ii) That will result in reducing the native vegetation on the subject property by any amount if that property had native vegetation existing on less than 65% of the property as of the effective date of the moratorium.

~~(iii) Provided, that subsections (i) and (ii) do not prohibit structures, buildings, and land use permits and approvals in the R-1, R-2, R-0.4, and Business/Industrial zones that will result in land disturbance of 12,500 square feet or less on the subject property.~~

(iii) Provided ~~further~~, that this Section B does not apply to complete land use applications (see BIMC Table 2.16.010-1) that were submitted prior to the

effective date of the moratorium, and to the resultant site work and associated approvals related to such complete land use applications.

Section 3. 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 4. No Change to Basis for Declaration of Emergency; Effective Date; Duration. This ordinance shall take effect and be in force five (5) days from and after its passage and publication as required by law. Provided, that this ordinance is not intended to change the basis of the emergency declarations stated in the four moratorium ordinances which preceded this ordinance, Ordinance Nos. 2018-02, 2018-03, 2018-05, and 2018-09, except as described in the "Whereas" clauses of this ordinance. Pursuant to *Matson v. Clark County Board of Commissioners*, 79 Wn. App. 641 (1995), non-exhaustive underlying facts necessary to support the emergency declarations adopted as part of the enactment of this moratorium were included in the "Whereas" clauses of Ordinance No. 2018-02 and Ordinance No. 2018-03, and were restated and supplemented in Ordinance No. 2018-05 and Ordinance No. 2018-09, as well as in this ordinance, and those "Whereas" clauses are adopted as findings of fact. This ordinance amending the moratorium shall remain effective for the six (6) month period as established for the moratorium, which moratorium has an effective date of January 9, 2018, unless terminated earlier by the City Council. The Council may, at its sole discretion, renew the moratorium for one or more six (6) month periods in accordance with state law. This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the City.

PASSED by the City Council this 24th day of April, 2018.

APPROVED by the Mayor this 24th day of April, 2018.

Kol Medina, Mayor

ATTEST/AUTHENTICATE:

Christine Brown, City Clerk

FILED WITH THE CITY CLERK	April 20, 2018
PASSED BY THE CITY COUNCIL	April 24, 2018
PUBLISHED:	April 27, 2018
EFFECTIVE DATE:	May 2, 2018
ORDINANCE NO:	2018-14