

ORDINANCE NO. 2003-30

AN ORDINANCE of the City of Bainbridge Island, Washington, limiting dock and pier development within Blakely Harbor and amending the Shoreline Management Master Program adopted by Ordinance 96-38.

WHEREAS, the City adopted a Comprehensive Plan on September 1, 1994, which establishes goals and policies for managing the land, shorelines and resources areas of Bainbridge Island; and

WHEREAS, in accordance with RCW 90.58, the Shoreline Management Act, the City is required to adopt and amend the City's Shoreline Master Program consistent with the Shoreline Management Act and any required elements of the Shoreline Master Program procedures and guidelines adopted by the Washington State Department of Ecology; and

WHEREAS, the City adopted a Shoreline Master Program (Ordinance 96-38) on November 26, 1996 and the Department of Ecology subsequently approved the City's program; and

WHEREAS, Blakely Harbor is a coastal inlet located along the southeastern shoreline of Bainbridge Island, containing 3.5 miles of shoreline, 290 acres of navigable water, and 5 docks or piers; is the last harbor within Central Puget Sound that remains largely undeveloped with private, commercial, and/or industrial docks or piers; and is a popular anchorage for vessels because of its undeveloped character, natural beauty, and scenic views; and

WHEREAS, The Bainbridge Island community has long had a commitment to preserving the waters of Blakely Harbor from the proliferation of private dock or pier development and promoting compatible recreational use of the harbor by the residents of Bainbridge Island and the State; and

WHEREAS, On November 30, 1992, the Bainbridge Island Park and Recreation District adopted Appendix C of its Comprehensive Plan, in which the limitation of dock development in Blakely Harbor was encouraged; and

WHEREAS, On January 7, 1999, the City of Bainbridge Island adopted the Harbor Management Plan (Resolution 99-01), which contained policies supporting the restriction of private docks or piers in Blakely Harbor; and

WHEREAS, The City of Bainbridge Island has prepared a document titled Blakely Harbor Cumulative Impact Assessment documenting the significant cumulative loss of scenic view sheds, navigable waters, and adverse cumulative effects to water and environmental quality likely to be caused by the proliferation of private dock and pier development within Blakely Harbor; and

WHEREAS, the City established the Shoreline Master Program Update Steering Committee in January 2002, which reviewed and recommended revisions to the Shoreline Master Program (Ord. 96-38) and in June 2002, the Shoreline Master Program Update Steering Committee forwarded their recommended goal and policy amendments to the Shoreline Master Program (Ord. 96-38), including suggestions on limiting dock and pier development within Blakely Harbor, to the Planning Commission; and

WHEREAS, on September 12, 2002, the Planning Commission held a public hearing on goal and policy amendments to the Shoreline Master Program (Ord. 96-38), including limitations to dock and pier development within Blakely Harbor, at which time members of the public had the opportunity to present testimony and other evidence in favor of or against the proposed amendments; and

WHEREAS, on December 12, 2002, the Planning Commission held a public meeting on the topics of bulkheads, docks, and piers, at which time members of the public had the opportunity to present testimony and other evidence related to those topics; and

WHEREAS, on January 16, 2003, the Planning Commission presented their recommended amendments to the Shoreline Master Program (Ord. 96-38), including policies and regulations limiting dock and pier development in Blakely Harbor, to the City Council Land Use Committee; and

WHEREAS, the City of Bainbridge Island would like to establish new policies and regulations, consistent with and furthering the policies of the Shoreline Management Act (RCW 90.58.020), limiting dock and pier development in Blakely Harbor in order to preserve the unique character, navigable waters, natural resources, and scenic beauty of the harbor and promote compatible recreational use of the harbor for the residents of Bainbridge Island and the State; and

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

Section 1. Section II of the City of Bainbridge Island Shoreline Master Program (Ordinance 96-38) is amended as follows:

Community or Joint-use Dock - A structure or structures which consists of a system of piers, buoys, or floats that is ~~are~~ intended for the common use of the residents of adjoining parcels or subdivision, short subdivision or community located on adjacent uplands. A community dock is not a commercial endeavor and is not for the purpose of serving the public. If a community or joint-use dock accommodates six (6) or more vessels, it is no longer a community or joint-use dock and shall be considered a marina.

Section 2. Section VI (Shoreline Modification Policies and Regulations), Subsection F (Piers, Docks, Recreational Floats, and Mooring Buoys) of the City of Bainbridge Island Shoreline Master Program (Ordinance 96-38) is amended as follows:

F. Piers, Docks, Recreational Floats, and Mooring Buoys

Applicability

Uses which may employ a pier or dock (for example, industry) are subject to the provisions herein as well as to the provisions contained in Section V, Specific Shoreline Use Policies and Regulations. Community or joint-use docks which provide moorage for six (6) or more vessels also must comply with the provisions of Section V, Subsection D, Boating Facilities.

Pursuant to RCW 90.58.030(3-e-vii) or its successor and WAC 173-14-040(h), or its successor certain activities are exempt from obtaining a Shoreline Substantial Development Permit (SSDP). For the benefit of the lot owner, surrounding properties, and water body users, the City will review all proposals for piers and docks to determine whether:

1. The proposal is or is not exempt from the requirements for a shoreline permit;
2. The proposal is suitably located and designed and that all potential impacts have been recognized and mitigated; and
3. The proposal is consistent with the intent, policies, and regulations of the Act [RCW 90.58.140(1) or its successor] and this program.

Exempt activities are subject to the provisions of the Master Program.

Policies

1. Multiple use and expansion of existing conforming piers, docks, and floats should be encouraged over the addition and/or proliferation of new facilities. Joint use facilities are preferred over new, single-use piers, docks, and floats.
2. The use of mooring buoys should be encouraged in preference to either

- piers or docks.
3. Piers, docks, and floats should be designed to cause minimum interference with navigable waters, the public's use of the shoreline, and views from adjoining properties.
 4. Piers, floats, and docks should be sited and designed to minimize possible adverse environmental impacts, including potential impacts on littoral drift, sand movement, water circulation and quality, and fish and wildlife habitat.
 5. Proponents of commercial pier, float, and dock projects are encouraged to provide for public docking, launching, and recreational access.
 6. Local programs and coordinated efforts among private and/or public agencies should be initiated to remove or repair failing, hazardous, or nonfunctioning piers and docks and restore such facilities and/or shore resources to a natural and/or safe condition.
 7. Use of natural, nonreflective materials in pier and dock construction should be encouraged. When plastics and other nonbiodegradable materials are used, precautions should be taken to ensure their containment.
 8. The proposed size of the structure and intensity of use or uses of any dock, pier, and/or float should be compatible with the surrounding environment and land and water uses.
 9. The development of new docks and piers shall be prohibited within Blakely Harbor between Restoration Point and the most eastern point along the north shore of Blakely Harbor (sometimes referred to as "Pigott Pt" or "Jasmine Pt"), except that:
 - a) A total of two community docks should be allowed with no more than one along each the north and south shores, respectively, provided that all residents along each shore shall have a non-extinguishable option to access the community dock located along their respective shore; and
 - b) One small public dock and/or pier for the mooring of dinghies and loading or unloading of vessels should be allowed for daytime use.

Regulations - General

1. Piers and docks shall be a permitted use in the Rural, Semi-rural, Urban and Aquatic environments, shall be ~~permitted~~ as a conditional uses use in the Conservancy environment, and shall be prohibited in the Natural and Aquatic Conservancy environments. The development of new docks and piers shall also be prohibited within all shoreline designations within Blakely Harbor between Restoration Point and the most eastern point along the north shore of Blakely Harbor (sometimes referred to as "Pigott Pt" or "Jasmine Pt"), except that:
 - a) A total of two community docks shall be a conditional use within the Urban, Semi-rural, Rural, and Aquatic environment with no more than one along each the north and south shores, respectively, provided that all residents along each shore shall have a non-extinguishable option to access the community dock located along their respective shore;
 - b) One public dock and/or pier for the mooring of dinghies and loading or unloading of vessels shall be a conditional use within the Urban, Semi-rural, Rural, and Aquatic environment for daytime use; and
 - c) Such community and public docks shall comply with this master program and other applicable laws; shall be the minimum size necessary; and shall be sighted and designed to mitigate adverse

impacts to navigation, views, scenic character, and natural resources as much as possible. Such community and public docks shall also be reasonably passable to swimmers, beach walkers, and human-powered water craft.

2. Proposals for piers or docks shall include, at a minimum, the following information:
 - a. Description of the proposed structure, including its location, dimensions, materials, design, and any shoreline stabilization or other modification required by the project;
 - b. Ownership of uplands, tidelands, and shorelands within three hundred (300) feet of the property boundaries;
 - c. Proposed location of piers, floats, or docks relative to property lines, OHWM, the line of navigation, the construction limit line, and the contour of the extreme low tide, as applicable;
 - d. Location, width, height, and length of piers or docks on adjacent properties; and
 - e. Agreements, if any, for cooperative use.
3. In areas identified by the City, the Washington State Department of Fish and Wildlife, or the Department of Natural Resources as having a high environmental value for shellfish, fish life, or wildlife, piers and docks shall be prohibited, except:
 - a. Where functionally necessary to the propagation, harvesting, testing, or experimentation of said marine fisheries or wildlife, or
 - b. Unless approved as a conditional use if it can be demonstrated that the dock or pier will not be detrimental to the natural habitat or species of concern.
4. Piers, floats, buoys, and docks shall not interfere with use of navigable waters.
5. Piers and docks may be limited in length or prohibited, where necessary, to protect navigation, public use, or habitat values.

Regulations - General Design and Construction Standards

1. Pilings must be structurally sound prior to placement in the water. The minimum number of pilings shall be used, favoring large spans on fewer pilings over smaller spans on more pilings.
2. Piles, floats, or other members in direct contact with water shall not be treated or coated with biocides such as paint or pentachlorophenol. Use of arsenate compounds or creosote-treated members is discouraged. In saltwater areas characterized by significant shellfish populations or in shallow embayments with poor flushing characteristics, untreated wood, used pilings, precast concrete, or other nontoxic alternatives shall be used. In all cases where toxic-treated products are allowed, products, methods of treatment, and installations shall be limited to those that are demonstrated as likely to result in the least possible damage to the environment based on current information. Used, creosote pilings are preferable to new ones.
3. No over-water field applications of paint, preservative treatment, or other chemical compounds shall be permitted, except in accordance with best management practices set forth in the marina section of the Master Program.
4. Pilings employed in piers or any other structure shall have a minimum vertical clearance of one (1) foot above extreme high water.
5. All docks shall include stops which serve to keep the floats off the bottom of tidelands at low tide.

6. If a bulkhead-like base is proposed for a fixed pier or dock where there is net-positive littoral drift (accretion beach), the base shall be built landward of the ordinary high water mark or protective berms.
7. When plastics or other nonbiodegradable materials are used in float, pier, or dock construction, precautions shall be taken to ensure their containment.
8. Overhead wiring or plumbing is not permitted on piers or docks.
9. New boat houses and new covered moorage shall not be permitted on piers or docks. Other structures on piers and docks shall be strictly limited in size and height to avoid impacting shoreline views.
10. A pier or dock shall not extend offshore farther than the most shoreward of the following:
 - a. The average length of the piers on the two adjoining properties;
 - b. In Eagle Harbor, the Construction Limit Line; or
 - c. Elsewhere, the distance necessary to obtain a depth of four (4) feet of water as measured at extreme low tide at the landward limit of the moorage slip.
11. Piers and docks shall require a building permit and shall meet standards set by the building official.
12. Lighting shall be the minimum necessary, or as required by the Coast Guard, to locate the dock at night, and should minimize glare.

Regulations - Joint-use Community Piers and Docks

1. Any hotel, motel, and/or multifamily residential development proposing to provide moorage facilities shall be required to construct a single, joint-use moorage facility. The City may authorize more than one joint-use moorage facility if a single facility would be inappropriate or undesirable, given the specific conditions of the site.
2. Proposals for joint-use community piers and docks shall demonstrate, by proof of recording of a covenant binding current and future parties, that adequate maintenance of the structure and the associated upland area will be provided by identified responsible parties. The proposed covenant shall be filed as part of the permit application and recorded after final approval.

Regulations - Commercial/Industrial Facilities

These standards apply to piers and docks intended for any commercial or industrial use other than commercial moorage of boats in marinas. (See also Section V, Specific Shoreline Use Policies and Regulations for boating facilities, commercial development, and industry.)

1. Substantial development permits for docks or piers serving single commercial or industrial enterprises shall not be granted until the access needs of adjacent commercial and/or industrial enterprises have been determined.
2. Facilities and procedures for receiving, storing, dispensing, and disposing of oil and other toxic products shall be designed to ensure that such oil and other toxic products are not introduced into the water body.
3. Bulk storage for gasoline, oil and other petroleum products for any use or purpose is prohibited on piers and docks. Bulk storage means nonportable storage in fixed tanks.
4. Spill clean-up facilities shall be available for prompt response and application at all piers and docks involved in oil and hazardous products transfer.

Regulations - Residential

1. If any docks are proposed, new subdivisions and short subdivisions with shoreline frontage shall be required to provide community docks rather than individual, private docks.
2. Docks shall be preferred over piers, where feasible.
3. Size:
 - a. Maximum length and width of a pier or dock shall be the minimum necessary to accomplish moorage for the intended boating use. (See Regulations - General Design and Construction Standards, above, for additional restrictions.)
 - b. The length shall not extend beyond the average length of the two nearest adjacent docks or the distance necessary to obtain a depth of four (4) feet of water as measured at extreme low tide at the landward limit of the moorage slip, or the line of navigation, whichever is more shoreward.
4. Side-yard Setbacks:

Docks, piers and floats shall be set back a minimum of ten (10) feet from side property lines, except that community piers, docks, and floats may be located adjacent to or upon a side property line when mutually agreed to by covenant with the owners of the adjacent property. A copy of the covenant must be recorded with the County Auditor and filed with the application for permit.
5. Community docks and piers shall include no more than one (1) moorage space per dwelling unit or lot.
6. Development of a dock or pier on single-family residential property shall require a Shoreline Substantial Development Permit or a Statement of Exemption issued by the City.

Regulations -- Mooring Buoys and Recreational Floats -General

1. Mooring buoys and recreational floats shall be prohibited in the Aquatic Conservancy environment. Mooring buoys and floats for recreational use shall be permitted in the Aquatic environment offshore from Conservancy, Rural, Semi-rural, and Urban environments and shall be prohibited offshore from the Natural environment. Mooring buoys for commercial use shall be permitted only as conditional uses offshore from the Urban environment.
2. Buoys shall not interfere with navigation, shall be visible in daylight one hundred (100) yards away, and shall have reflectors for night visibility.
3. If a buoy is located offshore of the extreme low tide line, the owner shall obtain a lease for the bed of navigable waters from Department of Natural Resources. [WAC 332-30-122 (1)(ii) or its successor].
4. Buoys shall lie between the waterfront property side lot lines extended beyond the shoreline, except those on Department of Natural Resources tidelands. Vessels moored to the buoys shall not swing across the extended side lot lines. Where the configuration of the waterfront lot precludes these requirements, a mooring buoy owner shall file with the City a written statement from the affected, adjacent, waterfront property owners agreeing to the buoy placement.
5. Mooring buoys shall be installed at least twenty (20) yards from other permitted piers, docks, floats, or buoys so as not to interfere with or obstruct existing piers, docks, floats, or buoys.
6. Owners of waterfront property are permitted to install one (1) mooring buoy per waterfront lot, except that where the waterfront lot is owned in community, the City may permit upon the owners' application, additional

- mooring buoys with the total not more than one (1) per owner in the community. [WAC 332-30-122 (1)(ii) or its successor].
7. Buoys shall be located offshore no farther than the Construction Limit Line in Eagle Harbor, and elsewhere not more than two hundred (200) feet beyond extreme low tide, the -3 fathom depth contour (-18 feet at mean low water), or the line of navigation, whichever is closest to shore. [WAC 332-30-148(2) or its successor].
 8. The owners or lessees of waterfront property zoned for commercial or industrial use may install mooring buoys for commercial vessels, subject to obtaining a Shoreline conditional use permit from the City for each mooring buoy.
 10. A contractor doing waterfront work involving floating equipment may place a temporary mooring buoy convenient to the work site, provided it is the responsibility of the contractor to ensure that all necessary permits are obtained from all agencies with jurisdiction.
 11. Recreational floats shall be located as close to shore as possible. They shall be located no farther than the following limits:
 - a. In Eagle Harbor, the construction limit line.
 - b. Elsewhere, the distance necessary to obtain a depth of four (4) feet of water as measured at extreme low tide at the landward end of the float, or the line of navigation, whichever is closer to shore.
 12. Recreational floats must be built so that the deck surface is one (1) foot above the water's surface and shall have reflectors for night visibility.
 13. Single-property-owner recreational floats shall not exceed eight (8) feet by (8) feet.
 14. All recreational floats shall include stops which serve to keep the floats off the bottom of tidelands at low tide.

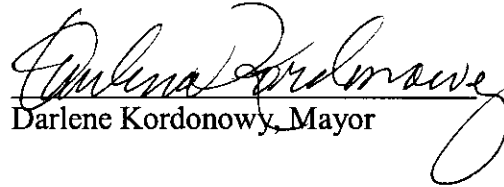
Section 3. Pursuant to state law, the Shoreline Management Master Program amendments adopted by this ordinance becomes effective on the date of a letter to the City of Bainbridge Island from the Washington State Department of Ecology approving the amendment. After the City receives such a letter from the Washington State Department of Ecology, the City Clerk shall publish in the City's official newspaper a notice of the date on which the Shoreline Management Master Program amendment became effective.

Section 4. Severability. If any section, sentence, clause or phrase of this ordinance 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 ordinance.

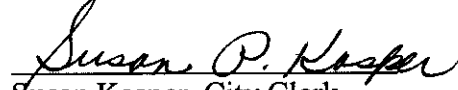
Section 5. Effective Date. This ordinance shall take effect on and be in force five days from and after its passage, approval, and publication as required by law, or upon the date of a letter to the City of Bainbridge Island from the Washington State Department of Ecology approving the Shoreline Management Master Program amendment adopted by this ordinance, whichever occurs last in time.

PASSED BY THE CITY COUNCIL this ~~10th~~ day of ~~September~~ 2003.

APPROVED BY THE MAYOR this ~~11th~~ day of ~~September~~ 2003.


Darlene Kordonowy, Mayor

ATTEST/AUTHENTICATE:


Susan Kasper, City Clerk

APPROVED AS TO FORM:

ROD P. KASEGUMA, City Attorney

FILED WITH THE CITY CLERK:	August 7, 2003
PASSED BY THE CITY COUNCIL:	September 10, 2003
PUBLISHED:	September 17, 2003
EFFECTIVE DATE:	September 22, 2003
ORDANCE No.: 2003-30	