

CITY OF BAINBRIDGE ISLAND

CITY COUNCIL AGENDA BILL



PROCESS INFORMATION

Subject: Resolution No. 2010-09, Creating and offering a grace period of an alternative lower fee for buoys processed under the programmatic permit	Date: April 14, 2010
Agenda Item: Unfinished Business	Bill No.: 10-021
Proposed By: Planning/Kathy Cook, Director	Referral(s): N/A

BUDGET INFORMATION

Department: PCD	Fund: N/A	Munis Contract #
Expenditure Req: None	Budgeted? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Budget Amend. Req? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

REFERRALS

2/3/10 City Council Study Session, 2/10/10 Business Meeting, Postponed 2/17/10 Study Session, 3/3/10 Study Session, 3/17/10 Study Session, 4/7/10 Study Session

Recommendation:

Receive Public Comment, Consider Approval

DESCRIPTION/SUMMARY

Action Item:

Consideration of Resolution No. 2010-09 that provides a fee and a reduced fee grace period for buoys processed under programmatic permit (SSDP15435).

History:

The City established fees for building and planning permits by Resolutions Nos. 99-26, 2000-33, 2001-43, 2002-15, 2003-24 and 2006-50. The City proposes a fee for buoys processed under programmatic permit (SSDP15435) and a reduced fee for buoys processed within the grace period.

In 2009, the Finance and Personnel Committee was briefed on the programmatic permit and proposed fee and recommended returning with a resolution to move forward for Council consideration. In addition, the Land Use Committee was briefed several times on the programmatic permit. The resolution was reviewed at Study Sessions in February and March and moved to the next business meeting agenda at the April 7th Study Session.

Schedule/Next Activities:

If the Council passes the Resolution, **and the programmatic permit (SSDP15435) is approved**, the new fee structure would go into effect.

Budget:

This Resolution would provide a reduced fee for the first two years the application is available and then a fee in accordance with costs of administering the application reviews.

RECOMMENDED ACTION

Motion:

Move that the City Council pass Resolution No. 2010-09 to add a fee for buoys reviewed under the programmatic permit (SSDP15435) should the programmatic permit (SSDP15435) be approved.

City of Bainbridge Island
PLANNING & COMMUNITY DEVELOPMENT



MEMORANDUM

TO: Lee Walton, Interim City Manager
Stan McNutt, Interim Deputy City Manager
City Councilmembers

FROM: Tami Allen, Harbormaster
Joshua Machen, AICP, Senior Current Planner
Meghan McKnight, Code Enforcement Officer

DATE: April 7, 2010

RE: Programmatic Buoy Permit / Resolution 2010-009

Please see the below summary of questions raised by the Council and members of the community with responses prepared by staff.

Is the programmatic buoy process a registration? Would a registration process be better?

No; the programmatic buoy process is not a registration process. It is a shoreline substantial development permit that creates criteria for programmatic buoy review. Any buoy, proposed or existing, that meets the criteria of the permit may submit on pre-designed plans and forms rather than applying for an individual shoreline substantial development permit or statement of exemption. The City is able to reduce the review time and streamline the process because the buoy will meet the already established criteria, which incorporates City, State and Federal requirements. Additionally, SEPA review and noticing have already been addressed, further reducing the time and costs.

No; a registration process would not achieve the same goals as the programmatic buoy permit. A registration process would not bring existing buoys into compliance, nor would it provide review and authorization for new buoys. A buoy is considered 'development' by the Department of Ecology and the City of Bainbridge Island and therefore requires either a shoreline substantial development permit or statement of exemption prior to its installation. Additionally, a registration process would not provide for the environmental review that is required in accordance with the State Environmental Policy Act (SEPA), the Department of Fish and Wildlife, the Army Corps of Engineers and the City of Bainbridge Island.

When does a buoy need the upland property owner’s permission?

Any buoy application (programmatic, shoreline substantial development permit, or statement of exemption) on private tidelands or where the swing circle of the vessel will encroach on private tidelands requires the permission of the private tideland owner. If the buoy and the swing circle do not encroach on private tidelands then the City does not require owner signature. The Department of Natural Resources will address any upland property rights with their review.

What buoys will the City consider nonconforming (“grandfathered”)?

Buoys placed within the waters of Bainbridge Island prior to 1996 are considered to be nonconforming development. Nonconforming development means a shoreline use or structure which was lawfully constructed or established prior to the effective date of the SMP and which no longer conforms to the applicable SMP provisions. Nonconforming uses and structures are allowed to remain and be maintained in accordance with BIMC 16.12.390. The City will implement a form and process for handling those existing buoys with the decision on the Programmatic Buoy Permit. There will be no fee for documenting the nonconforming buoy. Nonconforming buoys are not required to obtain a shoreline substantial development permit, statement of exemption or review under the programmatic process.

What documentation will the City consider for nonconforming?

The nonconforming application review does not have specific documentation requirements. This is a conscious decision. Many people have different forms of documentation that they will be able to provide showing the existence of their buoy (or that which they have ‘inherited’) prior to 1996. In choosing not to require people to show compliance with the Army Corps of Engineers or Department of Ecology or Department of Natural Resources – all who regulated buoys with written permits and authorizations prior to 1996 – the City chose to allow a greater range of buoy owners to document their nonconformity to the City’s regulations. Documentation of existence prior to 1996 can be provided in several forms, such as permits, receipts, pictures with dates or recognizable structures, and affidavits. Affidavits are legal personal statements, usually by neighbors or prior owners, which assist in documenting timeframes that sometimes the current owner is unaware of, or is unable to otherwise document. They are usually low on the list for documentation because they rely on memory rather than on records but can sometimes be useful in supplementing other documentation. Additionally, staff will use existing tools, such as prior years’ aerial photography, DNR shoreline video and the City’s shoreline inventories to assist in establishing nonconformity.

The City will assume that documentation provided by buoy owners has been submitted in good faith. The City is reviewing the documentation of these buoys from a perspective of trying to recognize them as nonconforming, with the goal of not having to repeat this process and providing an official statement of nonconformity. It is expected that individual cases will all be different, as people keep different records and have different histories with their properties and buoys. The City’s goal is to have enough information, through what the owner provides and what the City has on file, to have a well informed position in determining the buoy to have been placed prior to 1996 and therefore existing nonconforming to the current Shoreline Master Program.

Why does the City regulate buoys?

“The master program is essentially a shoreline Comprehensive Plan with a distinct environmental orientation applicable to shoreline areas and customized to local circumstances.” (City of Bainbridge Island Shoreline Management Master Program, page 2)

The main concerns specifically regarding recreational mooring buoys are environmental and navigational. The City’s regulations address the placement of buoys to mitigate the environmental impacts, such as water quality and damage to eelgrass beds, as well as navigational concerns of location regarding other structures and ways of travel.

Buoys have been considered ‘development’ since the enactment of the Shoreline Management Act of 1971/2. Due to their (usually) minimal cost, they are often exempt from the requirement to obtain a shoreline substantial development permit. The City of Winslow and Kitsap County both regulated the waters of Bainbridge Island prior to 1991 but did not issue individual statements of exemption. Some other jurisdictions continue to not issue individual statements of exemption for recreational mooring buoys.

In 1996 the City of Bainbridge Island updated the shoreline regulations through the adoption of the Shoreline Management Program in BIMC 16.12, which required a shoreline substantial development permit or statement of exemption for all development within shoreline jurisdiction, including recreational mooring buoys. The City has since issued several permits and exemptions for recreational mooring buoys, in accordance with BIMC Sections 16.12.340 and .360.

Does the City have to regulate buoys?

Buoys are considered ‘development’ by the Department of Ecology and the City of Bainbridge Island. If buoys are not identified as a use within an adopted Shoreline Master Program then they are considered an ‘unclassified use’ and will require a conditional use permit. Currently, buoys are a permitted use except in aquatic conservancies.

What do other jurisdictions do?

The Department of Natural Resources, the Washington State Department of Fish and Wildlife and the Army Corps of Engineers all require recreational mooring buoys to go through a process **and to conform to local jurisdictions requirements**. Cities and Counties in the Puget Sound region address recreational mooring buoys inconsistently; however proposed updates to Shoreline Master Plans appear to be considering a statement of exemption for any recreational mooring buoy.

Is the City currently enforcing the Shoreline Master Program as it relates to buoys? Why perform Island-wide enforcement now?

Yes; the City has been and currently is enforcing the buoy provisions in the Shoreline Master Program, however enforcement has been on an individual basis (usually complaint based). These individual enforcement cases resulted in buoys having to document their nonconforming status; obtain an after-the-fact shoreline substantial development permit; obtain a statement of exemption; or be removed. As a result of being mainly complaint based, areas were unevenly enforced.

The City currently has the resources and knowledge available to provide a comprehensive review and enforcement of buoys in the waters of Bainbridge Island, such as inventories performed through the Shoreline Stewardship Program, and advances in technology used for locating and mapping buoys.

A few years ago the City was ready to perform Island-wide enforcement of recreational mooring buoys. Recognizing that application review time and cost were common reasons cited for not legally placing buoys, City staff worked on the Programmatic Buoy Permit to provide a mechanism to bring many of the existing buoys into compliance with a less expensive and less onerous process prior to systematically beginning Island-wide enforcement. The City will continue to enforce the Shoreline Master Program as codified in BIMC Chapter 16.12.

How will enforcement proceed on existing buoys?

The City plans to post all buoys located within the waters of Bainbridge Island that have not received a shoreline substantial development permit or statement of exemption with notification for compliance. The responsible parties then have four options to bring the buoy into compliance.

- If the buoy existed prior to 1996, they may submit a nonconforming application and documentation.
- If the buoy was placed after 1996 and can meet the criteria of the programmatic permit (or can be modified to meet the criteria), they may submit a programmatic review application.
- If the buoy was placed after 1996 and cannot meet the criteria of the programmatic permit, they may submit an individual shoreline substantial development permit or statement of exemption (based on fair market value/cost of the buoy).
- The buoy can be removed.

The City plans to give six (6) months for the responsible parties to proceed with one of the above options. Alternately, if an extended timeline due to special circumstances is needed, the responsible party may submit formal notice of what option they will complete, at which time the City will establish an individual timeframe for compliance. To clarify, the two year timeframe for the reduced fee is not the timeline for compliance, although the reduced fee is intended to encourage people to bring their existing buoys into compliance.

What is the City Council's role in the Programmatic Buoy Permit?

The City Council is not changing any regulations or policies as part of this permit. In order to implement the goals of the Programmatic Buoy Permit, which was designed in part to reduce the cost of the review of recreational mooring buoys, the City Council has a recommendation for a fee for applications reviewed under the Programmatic Buoy Permit. The proposed fee is consistent with the cost of administering the permit, with a special two year grace period which allows currently proposed and existing buoys to file to submit to be in compliance with BIMC Chapter 16.12 at a reduced cost.

RESOLUTION NO. 2010-09

A RESOLUTION of the City of Bainbridge Island, Washington, amending the City’s building and planning fee schedule as it relates to fees for review of a buoy under the programmatic permit, as last amended by Resolution No. 2006-50.

WHEREAS, the City established fees for building and planning permits by Resolutions Nos. 99-26, 2000-33, 2001-43, 2002-15, 2003-24, and 2006-50; and

WHEREAS, the City has submitted a programmatic permit (SSDP15435) to create a process by which recreational mooring buoys meeting certain criteria may be reviewed and permitted through an expedited process, reducing applicant costs while allowing the City to better manage its shoreline resources; and

WHEREAS, the City wishes to establish a fee for review of buoy applications under the programmatic permit (SSDP15435); and

WHEREAS, it is expected the review of the application will take approximately two and one half (2 ½) hours of total staff time, including administration, site inspection and decision; and

WHEREAS, it is also the desire of the City to have a two-year grace period in which a reduced fee would be applicable to encourage persons with existing but unpermitted buoys to submit after-the-fact applications in order to permit and bring into compliance such buoys with the City’s Shoreline Master Program (BIMC Chapter 16.12); and

WHEREAS, a new fee for review of a buoy under the programmatic permit will be added to the City’s fee schedule; now, therefore,

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

The City’s fee schedule setting building and planning fees charged by the City, specifically subsection Shoreline Permits, is amended to add the following:

**SHORELINE PERMITS - BUOY \$450.00
(PROGRAMMATIC REVIEW)**

**SHORELINE PERMITS - BUOY \$200.00
(PROGRAMMATIC REVIEW
SUBMITTED PRIOR TO APRIL 30, 2012)**

PASSED by the City Council this _____ day of _____, 2010.

APPROVED by the Mayor this _____ day of _____, 2010.

Bob Scales, Mayor

ATTEST/AUTHENTICATE:

Rosalind D. Lassoff, City Clerk

FILED WITH THE CITY CLERK: _____, 2010

PASSED BY THE CITY COUNCIL: _____, 2010

PUBLISHED:

EFFECTIVE DATE:

RESOLUTION NO.: 2010-09