ORIGINAL

0962-ORD
08/27/07

CITY OF BELLEVUE, WASHINGTON

ORDINANCE No. 5762

AN ORDINANCE imposing a moratorium on the acceptance of applications for the review and/or issuance of Permits for any new development, addition or alteration within the Moratorium Area, as such terms are defined in this ordinance; repealing Ordinance No. 5724; and establishing an effective date.

WHEREAS, the Bellevue City Council has previously identified a goal to connect the Meydenbauer Bay area with Downtown Bellevue through a park or other form of publicly accessible connection, which goal is articulated in the Park and Open Space Acquisition goals described in the Comprehensive Plan and in other policy/planning documents; and

WHEREAS, additional planning is necessary to determine the appropriate form of and locations for such connections; and

WHEREAS, current public rights of way are insufficient to encourage pedestrian and vehicle trips between Meydenbauer Bay and Downtown Bellevue; and

WHEREAS, the planning area impacted by the policy to connect Meydenbauer Bay and Downtown includes the area shown on Attachment A (the "Moratorium Area"); and

WHEREAS, the applicable provisions of the Bellevue Land Use Code, other City Codes and existing infrastructure in the Moratorium Area do not adequately address the need for and form of access and connection between Meydenbauer Bay and Downtown Bellevue; and

WHEREAS, the City has a compelling interest in the protection of the health and safety of all of its residents, as well as a compelling interest in ensuring that the goals and policies contained within the Comprehensive Plan and other policy/planning documents are fulfilled; and

WHEREAS, without a moratorium the City could, in the near future, receive applications for development, additions or alterations in the Moratorium Area that would conflict with the achievement of the long-range vision for this area as described in the Comprehensive Plan and other policy/planning documents; and

WHEREAS, a moratorium on new development and additions or alterations to existing development in the Moratorium Area is required in order to allow sufficient time to draft Comprehensive Plan and Bellevue Land Use Code and other City Code amendments that encourage and allow implementation of the long-range vision, and

to present such amendments to the Planning Commission and City Council through the City's amendment process; and

WHEREAS, on January 22, 2007 the City Council adopted Ordinance 5714 establishing a moratorium in the Moratorium Area, which ordinance required a public hearing on the moratorium to be held no later than March 12, 2007; and

WHEREAS, on March 5, 2007 the City Council adopted Ordinance 5724 repealing Ordinance 5714 and extending the moratorium until September 13, 2007; and

WHEREAS, Washington state law, including RCW 35A.63.220 and RCW 36.70A.390, authorizes Washington cities to adopt moratoria for a period of up to six months following a public hearing, with additional extensions possible with additional hearings and extensions; and

WHEREAS, the City Council held a public hearing on September 4, 2007 to consider an additional six-month extension for the moratorium; now, therefore,

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Repeal. Ordinance No. 5724, adopted March 5, 2007, is hereby repealed.

Section 2. Imposition of Moratorium. A moratorium is hereby imposed in the Moratorium Area on the application for, intake of, review of, or issuance of any subdivision, short subdivision, land use approval, land use permit, building permit, variance, license, and/or other approval for any new use, change in use, new development, or additions or alterations to existing development (collectively such approvals and permits are referred to herein as "Permits"), except as provided in Section 3.

Section 3. Notwithstanding the moratorium established in Section 2 the City may continue to accept and issue the following Permits:

A. Those Permits necessary to correct existing life/safety issues that would otherwise pose a threat to property or residents or occupants of an existing structure; and

B. Those individual Permits that became vested prior to January 22, 2007; and

C. Those shoreline Permits that the City is prevented from imposing a moratorium on pursuant to the Washington State Court of Appeals decision *Biggers v. Bainbridge Island*, 124 Wn.App. 858 (2004); *rev. granted* 156 Wn.2d 1005 (2006). Should the Washington State Supreme Court overturn *Biggers* and uphold local jurisdictions' authority to impose moratoria on shoreline permits, the moratorium imposed in Section 2 shall automatically

extend to all such permits without need for additional Council action or an amendment to this Ordinance.

Section 4. Duration and Scope of Moratorium. The moratorium imposed by this ordinance shall become effective on the effective date of this Ordinance, and shall continue in effect until October 8, 2007, unless repealed, extended or modified by the City Council after subsequent public hearings and the entry of additional findings of fact pursuant to applicable law, including RCW 35A.63.220 and RCW 36.70A.390.

Section 5. Findings of Fact.

A. The above recitals are hereby incorporated as findings of fact;

B. Establishing a significant public connection between Meydenbauer Bay and Downtown Bellevue is a long-standing goal of the City, described in the Comprehensive Plan and other policy/planning documents;

C. Existing City Code provisions and existing infrastructure are inadequate to support implementation of this long-range goal;

D. New development or the investment in existing development represented by additions or alterations to existing development and uses within the Moratorium Area prior to review of the City's Land Use Code, other City Codes and Comprehensive Plan and amendments thereto compromise the ability to achieve the City's goals;

E. New development or the investment in existing development represented by additions or alterations to existing development and uses within the Moratorium Area prior to completion of such review would be detrimental to the health and safety of the citizens of the City of Bellevue, and would allow the establishment of vested rights contrary to and inconsistent with those amendments to the Comprehensive Plan and Bellevue Land Use Code and other City Codes that the City may adopt in order to achieve its vision; and

F. A planning process including significant opportunities for participation by property owners, residents and other stake-holders is underway and the moratorium is required to maintain current conditions while the planning process progresses.

Section 6. Additional Extensions. If a period of more than six months is required to complete consideration of any changes to the Comprehensive Plan or Bellevue City Codes, the Council may adopt additional extensions of this moratorium after any required public hearing, pursuant to applicable law, including RCW 35A.63.220 and RCW 36.70A.390.

Section 7. Definitions.

A. As used in this ordinance "Moratorium Area" includes all sites within the area between city-owned property on Meydenbauer Bay and the Downtown Park, as shown on Attachment A.

B. As used in this ordinance "subdivision", "short subdivision", "variance", "development", "addition", "alteration", and "structure" shall have the meaning given such terms in the Bellevue Land Use Code and Building Code, as applicable.

Section 8. Severability. Should any provision of this ordinance or its application to any person or circumstance be held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances shall not be affected.

Section 9. Savings Clause. Ordinance No. 5724, which is repealed by this ordinance, shall remain in force and effect until the effective date of this ordinance.

Section 10. Effective Date. This ordinance shall take effect five days after passage and legal publication.

Passed by the City Council this 4th day of September, 2007 and signed in authentication of its passage this 4th day of September, 2007.

(SEAL)

Grant S. Degginger, Mayor

Approved as to form:

Lori M. Riordan, City Attorney

Mary Kate Berens, Deputy City Attorney

Attest:

Myrna L. Basich, City Clerk

Published September 7, 2007