EMERGENCY ORDINANCE NO. 2018-11-025

AN ORDINANCE OF THE CITY OF BELLINGHAM, WASHINGTON, RELATING TO BED AND BREAKFAST FACILITIES, DECLARING AN EMERGENCY, ESTABLISHING AN IMMEDIATE EMERGENCY MORATORIUM ON THE SITING, ESTABLISHMENT AND OPERATION OF ANY STRUCTURES OR USES RELATING TO BED AND BREAKFAST FACILITIES AND THE SUBMISSION OF ANY BUSINESS LICENSE APPLICATIONS FOR SUCH USES, SETTING AS SIX MONTHS AS THE EFFECTIVE PERIOD OF THE MORATORIUM, TO ALLOW THE IMPLEMENTATION OF THE CITY’S SHORT-TERM RENTAL REGULATIONS, WHICH GO INTO EFFECT IN SIX MONTHS.

WHEREAS, for many years short-term rentals (a lodging use, other than a hotel or motel, in which a dwelling unit or portion thereof is provided to guests by a short-term rental operator for a fee for fewer than 30 consecutive nights) have been a popular lodging choice for travelers; and

WHEREAS, with the advent of websites that facilitate the marketing and booking for short-term rentals, this market has rapidly expanded across the globe; and

WHEREAS, the City currently regulates bed and breakfast facilities, a transient use similar in nature to short-term rentals; and

WHEREAS, the City does not currently regulate short-term rentals, other than the requirement for business registration; and

WHEREAS, the City anticipates that it will adopt new short-term rental regulations on November 5, 2018; and

WHEREAS, the short-term rental regulations will replace the City’s regulations for bed and Breakfast facilities; and

WHEREAS, the proposed short-term regulations seek to balance the economic opportunity created by short-term rentals with the need to maintain the City’s housing supply by including short-term rental permit caps in Residential General Use Type areas; and

WHEREAS, the proposed short-term rental regulations seek to protect the rights and safety of owners, guests and neighbors by including requirements related to issues such as parking, noise and safety; and

WHEREAS, the short-term rental regulations will not take effect for six months after the date of adoption; and

WHEREAS, the City believes a moratorium on bed and breakfast facilities is in the City’s best interest, as the short-term rental ordinance includes new regulations for this use and won’t take effect until six months after adoption; and

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WHEREAS, the moratorium will preserve the status quo and prevent property owners from applying for and becoming vested to the bed and breakfast facility regulations prior to the effective date of the short-term rental regulations; and

WHEREAS, RCW 36.70A.390 authorizes the City Council to adopt an immediate moratorium for a period of up to six months without holding a public hearing on the proposal provided that a public hearing is held within at least 60 days of its adoption; and

WHEREAS, the City Council desires to impose an immediate 6-month moratorium on the acceptance of any development permit application or business registration application for the siting, location or operation of any bed and breakfast facility, and

WHEREAS, RCW 36.70A.390 provides that, "A county or city governing body that adopts a moratorium, interim zoning map, interim zoning ordinance, or interim official control without holding a public hearing on the proposed moratorium, interim zoning map, interim zoning ordinance, or interim official control shall hold a public hearing on the adopted moratorium, interim zoning map, interim zoning ordinance, or interim official control within at least sixty days of its adoption, whether or not the governing body received a recommendation on the matter from the planning commission or department. If the governing body does not adopt findings of fact justifying its action before this hearing, then the governing body shall do so immediately after this public hearing. A moratorium, interim zoning map, interim zoning ordinance, or interim official control adopted under this section may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium, interim zoning map, interim zoning ordinance, or interim official control may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal"; and

WHEREAS, RCW 35.63.200 provides a similar process for adopting and extending land use moratoriums, and

WHEREAS, moratoriums enacted under RCW 36.70A.390 and/or RCW 35.63.200 are methods by which local governments may preserve the status quo so that new regulations will not be rendered moot by intervening projects; and

WHEREAS, RCW 36.70A.390 and RCW 35.63.200 both authorize the enactment of a moratorium without holding a public hearing if a public hearing is held within at least sixty days of its enactment; and

WHEREAS, pursuant to WAC 197-11-880, the adoption of this emergency moratorium is exempt from the requirements of a threshold determination under the State Environmental Policy Act (SEPA), and the proposed short-term rental regulations received a SEPA determination of non-significance; and
WHEREAS, a moratorium will provide the City with additional time after adoption of the proposed short-term rental regulations to implement the new regulations, including associated fees; and

WHEREAS, the City Council concludes that the City has the authority to establish a moratorium and that the City must adopt a moratorium concerning the filing, acceptance, and processing of new applications for the establishment of new bed and breakfast facilities under the current rules to prevent bed and breakfast facilities from being established after the adoption, but before the effective date, of short-term rental regulations; and

WHEREAS, the City Council adopts the foregoing as its findings of facts justifying the adoption of this ordinance.

NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1. Findings of Fact. The City Council adopts the above "WHEREAS" recitals as findings of fact in support of its action as required by RCW 36.70A.390 and RCW 35.63.200.

Section 2. Definitions.

A. Bed and Breakfast Facility. A single-family residence with not more than two rooms let as transient housing. For the purpose of this section, a transient shall be defined as a person who stays for a period not to exceed two weeks. Accommodations may include limited food service for guests.

B. Short-term Rental. A lodging use, other than a hotel or motel, in which a dwelling unit or portion thereof is provided to guests by a short-term rental operator for a fee for fewer than 30 consecutive nights. A dwelling unit or portion thereof that is used by the same individual or individuals for 30 or more consecutive nights is not a short-term rental.

Section 3. General Definitions.

A. "Exempt development permits" shall include any permit application for a structure or use/operation of property for bed and breakfast facilities, as defined in this ordinance, that is subject to the vested rights doctrine, and that was submitted to the City and determined by the City staff to be complete on or before the effective date of this ordinance.

B. "Non-Exempt development permits shall include any permit application or business license or registration application for a structure or use/operation of property for a bed and breakfast facility, as defined in this ordinance, that is:

1. A permit application that is not subject to the vested rights doctrine and/or that was submitted to the City after the effective date of this ordinance; and/or
2. A business license or registration application for use/operation of property as a bed and breakfast, as defined in this ordinance that was submitted to the City either before or after the effective date of this ordinance.

Section 4. Purpose. The purpose of this moratorium is to prevent the establishment of bed and breakfast facilities after adoption of new short-term rental regulation and to allow the City adequate time to implement the proposed short-term rental regulations. The short-term rental regulations will take effect six months after third and final reading, which is anticipated to occur on November 5, 2018.

Section 5. Moratorium Imposed. The City Council imposes an immediate six-month moratorium on the acceptance of all non-exempt development permit and business license or registration applications, as defined in this ordinance. All such non-exempt development permit and business license or registration applications shall be rejected and returned to the applicant. With regard to the City's acceptance of any exempt development permit applications, such acceptance shall only allow processing to proceed, but shall not constitute an assurance that the application will be approved.

Section 6. Duration of Moratorium. This moratorium shall be in effect for six (6) months, beginning on November 5, 2018, and ending on May 5, 2019.

Section 7. Public Hearing Required. As required by RCW 36.70A.390, within sixty (60) days of passage of this ordinance, the City Council will hold a public hearing on this moratorium.

Section 8. Work Plan. During the moratorium period, City staff will implement the new short-term rental regulations by developing application materials, setting appropriate fees, adding the new use to the City's permit software system, and hiring a consultant to help with monitoring the new use, training staff on the new regulations, and developing other materials to assist staff and the public in understanding the new regulations.

Section 9. Declaration of Emergency. The City Council hereby declares that an emergency exists necessitating that this ordinance take effect immediately upon passage by a majority vote plus one of the whole membership of the Council as required by RCW 35A.12.130. Without an immediate moratorium on the City's acceptance of non-exempt development applications, such applications could become vested, leading to development or a use of property that is incompatible with the new short-term rental regulations. Therefore, the moratorium must be imposed as an emergency measure to protect the public health, safety and welfare, and to prevent the submission of applications to the City in an attempt to vest rights for an indefinite period of time. This ordinance does not affect any existing vested rights. Any use currently in operation as a bed and breakfast use without a valid City business license or bed and breakfast permit on the date of the passage of this ordinance is not a legal non-conforming use.
Section 10. Effective Date. This ordinance shall take effect and be in full force and effect immediately upon passage, as set forth herein, as long as it is approved by a majority plus one of the entire membership of the Council, as required by RCW 35A.12.130.

Section 11. Conflict with other BMC Provisions. If the provisions of this ordinance are found to be inconsistent with other provisions of the Bellingham Municipal Code, this ordinance shall control.

Section 12. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be unconstitutional or unlawful 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.

PASSED by the Council this 5th day of November, 2018.

Dan Hammill, Council President

APPROVED by me this 14th day of November, 2018.

Kelli Linville, Mayor

ATTEST: Andy Asbjornsen, Interim Finance Director

APPROVED AS TO FORM:

Office of the City Attorney

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