

# Process Issue In The Bainbridge Island Municipal Code & How It Can Be Fixed

The Bainbridge Island Municipal Code (BIMC) includes a number of development regulations. These regulations serve as controls placed on development and detail how land may be used. They serve the purpose of implementing the broader goals and policies of the City's Comprehensive Plan which serves as the guide for how the island develops over time.

BIMC 18.09.005 provides that when a proposed use is not specifically listed *“the use may be allowed if the planning director determines that it is similar to other uses listed and compatible with other uses in the vicinity where it will be located.”*

In this specific case the Planning Director determined that a crematorium would be considered as a conditional use due to it being similar to *“a cemetery, religious facility, mining and quarrying, and recycling center.”* No mention of compatibility or analysis of the vicinity that was considered in this determination was presented. The enabling code language is vague and subjective: *“similar,” “compatible,”* and *“vicinity”* are not defined, prioritized, nor necessarily relational and no requirements for how they should be analyzed are provided.

The general nature of the code language coupled with an outright lack of required analysis or decision criteria empower the Planning Director – a single, non-elected staff member – with substantial discretion and authority for decision making typically granted only to the City Council. Decisions related to use regulations should appropriately be the work of the City Council given their need to be considered within the totality of the island's land use planning framework and their potential to have far reaching impacts on the community and environment.

The current system fails to provide the planning director with a usable framework, guidance, or guardrails. The current system lacks transparency, does not require notification of those that live nearby the proposed land use, and fails to provide the measures necessary to ensure that the proposed non-specified land use adheres to other adopted plans and is appropriate with the surrounding environment.

A crematory is an industrial incinerator. Many companies that manufacture crematories also manufacture incinerators. There is a reason for this; crematories do not differ in design, construction, or operation from an incinerator. Many municipalities across the country and in the State of Washington classify crematoria as incinerators. Kitsap County is among them. Many cities restrict crematoria to industrial or commercial zones or require minimum setbacks from residential properties because they recognize the adverse health impacts that are associated with long term exposure to crematoria emissions and the degradation of the surrounding environment caused by their operation.

While the BIMC has basic requirements for all uses whether specified or not, it contains no regulations whatsoever that are specific to crematories. For example, setbacks in the R-0.4 zone where Hillcrest is located range from 15 to 25 feet; that is any structure may be located within 15 to 25 feet of a property line. Kitsap County's code, in comparison, requires a crematory to be setback a minimum of 200 feet from a property line in a residential zone.

The potential that a new crematorium will be located in a residential neighborhood, in close proximity to homes, residential properties, and wetlands, highlights how Bainbridge code's development regulations are inadequate. There are two distinct but equally serious problems facing the community. First, we have a flawed process for determining when new, unspecified uses may be allowed, one in which there is no rigor of analysis, objective decision criteria, or public engagement. Second, there is the potential for a new use with no gauge for what will be approved – location, dimensions, proximity to other uses, parking, etc. – or if and how the project will be required to avoid or minimize adverse impacts of the new use on the existing zoning district.

The municipal code needs to be amended to address these problems. Here is how:

1. Amend the code to require a public process that involves the planning commission and the city council in any determination regarding allowing non-specified land uses. This change is necessary due to the dramatic and adverse impacts that can arise from inappropriate land use determinations.

2. Amend the city code to include use-specific standards for crematoria that include their classification as an industrial use, their restriction to industrial zones, and their exclusion from residential zones. Establish appropriate minimum setbacks from residential zones and evaluate whether current federal and state emissions standards are adequate.

These amendments to the code are necessary to ensure that the council, planning commission, and the community are involved in determining the nature of a proposed land use so that best practices from other municipalities can be examined and the full range of potential consequences can be identified and evaluated. These code changes are necessary to ensure responsible and equitable development occurs and that unforeseen land uses are properly analyzed with adequate considerations given to the City's Comprehensive and Climate Action Plans, as well as safeguarding the health and safety of island residents.