

ORDINANCE NO. 08-892

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, RELATING TO VESTING OF PROJECT PERMIT APPLICATIONS AND EXPIRATION OF PROJECT PERMITS AND ADDING A NEW CHAPTER 18.14 TO THE BLACK DIAMOND MUNICIPAL CODE

WHEREAS, the purpose of the vested rights doctrine is to provide a measure of certainty to City regulators and developers and to protect a developer's expectations against fluctuating land use policy; and

WHEREAS, although vesting of some land use development and building permit rights is regulated under state statutes, the law leaves certain aspects of vesting regulation to local judgment, including what shall constitute a completed permit application and, in some cases, how long a permit approval shall be valid; and

WHEREAS, it is in the best interests of the entire community to adopt a local vested rights policy, thereby providing a measure of clarity and certainty to City staff, developers and property owners; and

WHEREAS, providing clarity and certainty to both developers and the community affected by development requires that at some point after an application has been filed but not pursued by the applicant, the application should be closed.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Title 18 of the Black Diamond Municipal Code is hereby amended by the addition of a new Chapter 18.14 titled "Vesting," which shall contain the following Sections:

18.14.010 Definitions

18.14.020 Period for review of permit applications—Lapsing of applications

18.14.030 Vesting of project permits

18.14.040 Amendments to permit—Effect on vesting.

18.14.050 Waiver of vesting

18.14.060 Duration of approvals—Effect of permit expiration

18.14.070 Suspension or revocation of permit—Effect on vesting

18.14.080 Lapsing of existing project approvals—Notice required

Section 2. The Black Diamond Municipal Code is hereby amended by the addition of a new section 18.14.010 to read as follows:

18.14.010 Definitions

For purposes of this Chapter, the following definitions shall apply:

A. "Complete application" or "complete project permit application" means a permit application that meets the procedural submission requirements required for such a permit by the Black Diamond Municipal Code and the city's administrative regulations, and includes all information needed under the city's municipal code and administrative regulations to make an application sufficient for continued processing; in addition, all applicable fees must have been paid.

B. "Lapse" means that any rights or potential rights created by the filing of a project permit application, whether the application is complete or incomplete, shall cease, and the application shall be deemed void.

C. "Project action" means a specific activity, located in a defined geographic area, relating to construction or development of such area.

D. "Project permit" means any land use or environmental permit or license required from the City for a project action, including but not limited to building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by sensitive area or critical area ordinances, master planned developments, and site-specific rezones authorized by a comprehensive plan or subarea plan, but excluding the adoption or amendment of a comprehensive plan, subarea plan, master planned development regulations or other development regulations.

E. "Vesting" means the establishment of a date that is used to determine which zoning and other land use control ordinances will apply to the review by the City of a complete project permit application.

Section 3. The Black Diamond Municipal Code is hereby amended by the addition of a new section 18.14.020 to read as follows:

18.14.020 Period for review of permit applications—Lapsing of applications

A. (1) *Timeframe for initial review.* As required by RCW 36.70B.070, as currently enacted or hereafter amended, within twenty-eight (28) days of receipt of any type of project permit application, the City shall mail or provide in person to the applicant a written determination stating either (a) that the application is complete, or (b) that the application is incomplete, and stating what is necessary to make the application complete. To the extent known to the city, the city shall identify other agencies of local, state, or federal government that may have jurisdiction over some aspect of the application. (2) *Timeframe for review after additional information provided to city.* As required by RCW 36.70B.070, as currently enacted or hereafter amended, within fourteen (14) days after the applicant has submitted additional information requested by the city as necessary for a complete application, the city shall notify the applicant whether the application is complete or what additional information is necessary. (3) *Timeframe for review of a complete application.* Once an application is deemed complete, the review process should take no longer than one hundred twenty (120) days to issue a determination or take other action unless the city issues written findings that a specified amount of additional time is needed to process specific complete permit applications or project types, as provided by RCW 36.70B.080, as currently enacted or hereafter amended.

B. Permit applications must be complete and all applicable fees paid within one hundred eighty (180) days of filing or will become void. However, in the case of construction permits issued in accordance with the International Building Code, the building official is authorized to grant one or more extensions for additional periods of no more than ninety (90) days each, but only where such extensions are requested in writing and justifiable cause is shown. The 180 days shall be tolled during any period in which the permit application is the subject of an appeal that has been properly and timely filed pursuant to BDMC chapter 2.30.

C. If, after the filing of a complete permit application, a period of at least one year occurs where the City has not been contacted by the applicant and no final action has been taken by the City to deny or issue said permit, the application shall lapse and become void.

D. Except as prohibited by law, any of the terms and conditions of this section may be waived or amended for a specific permit application for good cause shown by written agreement between the City and the applicant.

Section 4. The Black Diamond Municipal Code is hereby amended by the addition of a new section 18.14.030 to read as follows:

18.14.030 Vesting of project permits

A. All project permit applications shall be considered under the zoning and other land use control ordinances in effect on the date a complete application for such permit is filed.

B. Vesting of a complete project permit application does not vest any subsequently required permits, nor does it affect the requirements for vesting of subsequent permits or approvals, provided: (1) a complete application for a subdivision or short subdivision shall be vested pursuant to the terms of RCW 58.17.033, as currently enacted or hereafter amended; (2) the approved specific use and density identified in an approved final subdivision shall be vested for the period of time allowed under RCW 58.17.170, as currently enacted or hereafter amended; (3) short subdivisions shall be vested for the approved specific use and density identified in the approved final short subdivision for a period of five years from the date of final plat approval; (4) vesting of subsequent permits and approvals as part of a master planned development shall be governed by this chapter unless expressly overridden by the terms of a development agreement executed pursuant to BDMC Chapter 18.98.

C. A complete application for a grading or filling permit vests only to the grading and filling on the property and does not vest any subsequent development or construction activities, including but not limited to water, sewer, storm water, plumbing, electrical, or other mechanical work. However, a project shall vest as to storm water management regulations if a complete storm water drainage permit application is submitted concurrently. Pursuant to BDMC 18.98, vesting of storm water permits for a Master Planned Development shall be on a phase by phase basis, unless otherwise provided by the terms of the approved Master Planned Development agreement.

D. Submittal of pre-application materials does not, by itself, vest a project. However, SEPA checklists and other SEPA submittals may be considered in determining whether the underlying project permit application is complete.

E. Notwithstanding any other provisions of this chapter, the city may amend, alter, or suspend any vested rights created by the filing of a complete

permit application and/or preliminary or final plat approval where the city's legislative body finds that a change in conditions creates a serious threat to public health or safety in the permitted area if development were to proceed under the vested rights.

Section 5. The Black Diamond Municipal Code is hereby amended by the addition of a new section 18.14.040 to read as follows:

18.14.040 Amendments to permit—Effect on vesting.

A. *“Minor” amendments.* An applicant may be granted an amendment to any of the conditions or requirements of a permit: (1) upon a showing of changed circumstances and a determination by the mayor, or his or her designee, that (a) the requested amendments constitute “minor” adjustments that can be sufficiently mitigated through new actions that may be required as part of the permit amendment approval, and (b) each of the proposed amended conditions is not otherwise prohibited under the municipal code and would not require additional environmental review under BDMC Title 19, and (2) the proposed amendments would not (a) increase gross building area by more than ten percent, (b) increase the number of dwelling units, (c) increase total impervious surface area, (d) change the number of ingress or egress points, or (e) increase the area of site disturbance by more than ten percent. Modifications to a permit required by the city shall be deemed “minor” amendments.

B. *“Major” amendments.* An applicant shall not be granted an amendment to any condition or requirement of a permit if the mayor, or his or her designee, determines that the proposed amendment constitutes a “major” amendment. Any proposed amendment to the conditions and requirements of a permit that does not meet the requirements of subsection A shall be considered a “major” amendment. Permission to implement a “major” amendment shall require a new permit application to be filed and approved by the City, *provided*, any work or use covered by the existing permit that would be unaffected by the requested “major” amendment shall continue to be vested under the terms of the existing permit.

C. *Effect on vesting.*

(1) Unless otherwise agreed to in writing by the City, approval of “minor” amendments to permit conditions and requirements shall terminate any vested right to the original permit conditions insofar as those conditions are inconsistent

with the approved amendments, and, unless also otherwise agreed, approval does not toll or otherwise change the date upon which the amended permit lapses under this chapter.

(2) Any new permit application filed as part of seeking a “major” change to the conditions and requirements of the original permit shall not be vested to any of the conditions of the original permit and shall be subject to the current codes and regulations in effect at the time the complete new application is filed.

D. *City’s decision is final.* The city’s determination that a requested amendment is “minor” or “major” shall be final and not subject to appeal.

E. *Amending MPD permits.* Amending of a Master Planned Development approval is controlled by the provisions of BDMC Chapter 18.98, *provided*, amending of subsequent permits and approvals required as part of a master planned development shall be governed by this chapter unless expressly overridden by the terms of a development agreement executed pursuant to BDMC Chapter 18.98.

Section 6. The Black Diamond Municipal Code is hereby amended by the addition of a new section 18.14.050 to read as follows:

18.14.050 Waiver of vesting

A property owner may voluntarily waive vested rights at any time during the processing of an application by delivering a written and signed waiver to the Community Development Director stating that the property owner agrees to comply with all development regulations in effect on the date of delivery of the waiver.

Section 7. The Black Diamond Municipal Code is hereby amended by the addition of a new section 18.14.060 to read as follows:

18.14.060 Duration of approvals—Effect of permit expiration

A. Except where a different duration is established elsewhere in the Black Diamond Municipal Code, or by executed development agreement, administrative ruling or judicial order, or by state or federal law, all project permits shall expire two (2) years after the date of issuance if, in the opinion of the City, construction of the project has not been substantially completed, *provided*, an extension of the permit may be granted as allowed under subsection B, and a building permit may become void after 180 days of inactivity, as detailed in

subsection D, and *provided further*, permits that authorize an activity or use, rather than construction of a building or structure, shall expire as of the date indicated on the permit.

B. For project permits subject to the two-year duration set forth in subsection A, above, the City may extend the date of permit expiration up to two (2) years for good cause, upon proper request by the applicant at least thirty (30) days prior to expiration of the permit. Requests for extensions shall be submitted on forms provided by the City with payment of a fee equal to one-half of the permit application fee in effect at the time the request for extension is filed. Good cause shall mean the applicant was unable to substantially complete construction due to circumstances beyond the applicant's control and not foreseeable at the time of permit issuance, and the applicant demonstrates the ability to complete the project within the extended time period.

C. Unless a permit has been extended pursuant to subsection B, above, or as otherwise provided by an executed development agreement, any vested rights to particular fees, regulations, or conditions of issuance associated with a permit shall cease upon expiration of the permit, except as RCW 58.17.170 or other laws may apply. An individual or entity seeking to replace an expired permit shall be subject to each fee, regulation, or condition of issuance in effect at the time a new complete permit application is filed and to which no specific exemption applies.

D. Any otherwise valid building permit shall be deemed to have expired and become void if the work authorized by the permit has not been substantially commenced within one hundred eighty (180) days after its issuance or the work authorized by the permit is suspended or abandoned for a period of one hundred eighty (180) days after the work has commenced.

Section 8. The Black Diamond Municipal Code is hereby amended by the addition of a new section 18.14.070 to read as follows:

18.14.070 Suspension or revocation of permit—Effect on vesting.

A. The Community Development Director, or his or her designee, is authorized to suspend or revoke any permit issued by the city whenever the permit is issued in error or was issued on the basis of materially incorrect, inaccurate or incomplete information, or in violation of any ordinance or regulation or any of the provisions of

the municipal code, unless suspension or revocation is barred under the Land Use Petition Act or other law.

B. When, in the opinion of the city, the suspension or revocation of a permit is based on no fault of the applicant, a replacement permit issued for the same project within one hundred twenty (120) days of the suspension or revocation shall be vested to the regulations and requirements in effect as of the date the original complete application was filed and no additional application fee shall be required, *provided*, the project must still fully comply with the regulations and requirements in effect at the time the original complete application was filed.

Section 9. The Black Diamond Municipal Code is hereby amended by the addition of a new section 18.14.080, to read as follows:

18.14.080 Lapsing of existing approvals—Notice required.

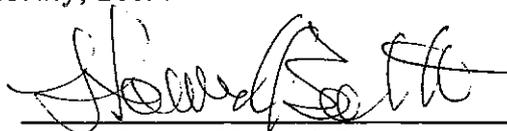
Any project approval or permit issued by the city prior to the enactment of this chapter, if such approval or permit is not already subject to a definite expiration date under the provisions of the city's municipal code, shall hereby lapse and become void on April 1, 2012, *provided*, the city shall take reasonable steps to notify persons who may possess such approval or permits of this deadline. Reasonable steps shall include putting notice on the city's website and mailing written notice to any person whom the city is aware would be affected and for whom the city is able, through reasonable effort, to determine a current mailing address. Extension of such an approval or permit, or issuance of a new approval or permit, shall be subject to the provisions of this chapter.

Section 10. Each and every provision of this Ordinance shall be deemed severable. In the event that any portion of this Ordinance is determined by final order of a court of competent jurisdiction to be void or unenforceable, such determination shall not affect the validity of the remaining provisions thereof, provided the intent of this Ordinance can still be furthered without the invalid provision.

Section 11. This Ordinance shall be in full force and effect five (5) days after publication as required by law. A summary of this Ordinance may be published in lieu of the entire Ordinance, as authorized by State law.

Introduced on the 26th day of February, 2009.

Passed by the City Council on the 26th day of February, 2009.



Mayor Howard Botts

ATTEST:



Brenda Streepy, City Clerk

APPROVED AS TO FORM:

Loren D. Combs, City Attorney

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