

ORDINANCE NO. 09-897

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, AMENDING CHAPTER 18.98 OF THE BLACK DIAMOND MUNICIPAL CODE TO UPDATE THE PROCEDURES, REQUIREMENTS, AND STANDARDS RELATING TO APPLICATION FOR, APPROVAL OF, AND AMENDMENT TO THE CONDITIONS ATTACHED TO A MASTER PLANNED DEVELOPMENT

WHEREAS, thoughtful regulation of master planned developments is especially important because of the significant impact such a development has on the existing density and character of the area being developed; and

WHEREAS, in recognition of this fact, the City of Black Diamond had previously enacted chapter 18.98 of the municipal code to create a set of guidelines and requirements governing master planned developments; and

WHEREAS, after having worked with the existing provisions of chapter 18.98 for several years, city staff identified some additional issues and concerns that needed to be addressed and also certain provisions that needed clarifying or amending; and

WHEREAS, the resulting additions and amendments to chapter 18.98 contained in this ordinance should ensure that each master planned development application is treated consistently and evaluated fairly and that the terms and conditions placed on any development approvals shall further the long-term vision of the City of Black Diamond as a livable, vibrant, desirable community in which to live and work.

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

Section 1. Chapter 18.98 of the Black Diamond Municipal Code (“Master Planned Development”) is hereby amended to read as shown on Exhibit “A,” which is incorporated to this ordinance by reference.

Section 2. Severability. 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 3. Effective date. 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 16th day of April, 2009.

Passed by the City Council on the 16th day of April, 2009.



Mayor Howard Botts

ATTEST:



Brenda L. Streepy, City Clerk

APPROVED AS TO FORM:

Loren D. Combs, City Attorney

Published: 4-21-09
Effective Date: 4-26-09

Chapter 18.98
MASTER PLANNED DEVELOPMENT

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18.98.005 MPD zoning district created.

18.98.010 Master planned development (MPD) permit—Purpose.

18.98.020 MPD permit—Public benefit objectives.

18.98.030 MPD permit—Criteria for MPD eligibility.

18.98.040 MPD permit—Application requirements.

18.98.050 MPD permit—Required approvals.

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18.98.090 MPD permit—Development agreement.

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18.98.110 MPD standards—Design review required.

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18.98.130 MPD standards—Development standards.

18.98.140 MPD standards—Open space requirements.

18.98.150 MPD standards—On-site recreation and trail requirements.

18.98.155 MPD standards – Sensitive Areas Requirements.

18.98.160 MPD standards—Transfer of development rights.

18.98.170 MPD standards—Street standards.

18.98.180 MPD standards—Stormwater management standards.

18.98.190 MPD standards—Water and sewer standards.

18.98.195 Vesting.

18.98.200 Revocation of MPD permit.

18.98.005 MPD zoning district created.

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The master plan development (MPD) zoning district is created. No development activity may occur, or any application accepted for processing, on property subject to an MPD zoning designation, or for which the submittal of an MPD is required by a development agreement, unless it is done in accordance with the terms and conditions of a valid MPD permit or consistent with this chapter. Development activity shall include, but not be limited to, grading, clearing, filling, tree harvesting, platting, short platting, building or any other activity for which a city permit or other approval is required. (Ord. 796 § 1, 2005)

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18.98.010 Master planned development (MPD) permit - Purpose.

The purposes of the master planned development (MPD) permit process and standards set out in this chapter are to:

- A. Establish a public review process for MPD applications;
- B. Establish a comprehensive review process for development projects occurring on parcels or combined parcels greater than eighty acres in size;
- C. Preserve passive open space and wildlife corridors in a coordinated manner while also preserving usable open space lands for the enjoyment of the city's residents;
- D. Allow alternative, innovative forms of development and encourage imaginative site and building design and development layout with the intent of retaining significant features of the natural environment;
- E. Allow flexibility in development standards and permitted uses;
- F. Identify significant environmental impacts, and ensure appropriate mitigation;
- G. Provide greater certainty about the character and timing of residential and commercial development and population growth within the city;
- H. Provide environmentally sustainable development;
- I. Provide needed services and facilities in an orderly, fiscally responsible manner;
- J. Promote economic development and job creation in the city;
- K. Create vibrant mixed-use neighborhoods, with a balance of housing, employment, civic and recreational opportunities;
- L. Promote and achieve the city's vision of incorporating and/or adapting the planning and design principles regarding mix of uses, compact form, coordinated open space, opportunities for casual socializing, accessible civic spaces, and sense of community; as well as such additional design principles as may be appropriate for a particular MPD, all as identified in the book Rural By Design by Randall Arendt and in the City's design standards;
- M. Implement the city's vision statement, comprehensive plan, and other applicable goals, policies and objectives set forth in the municipal code. (Ord. 779 § 2 Exh. 1 (part), 2005)

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18.98.020 MPD permit - Public benefit objectives.

A specific objective of the MPD permit process and standards is to provide public benefits not typically available through conventional development. These public benefits shall include but are not limited to:

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- A. Preservation and enhancement of the physical characteristics (topography, drainage, vegetation, environmentally sensitive areas, etc.) of the site;
- B. Protection of surface and groundwater quality both on-site and downstream, through the use of innovative, low-impact and regional stormwater management technologies;
- C. Conservation of water and other resources through innovative approaches to resource and energy management including measures such as wastewater reuse;
- D. Preservation and enhancement of open space and views of Mt. Rainier;
- E. Provision of employment uses to help meet the city's economic development objectives;
- F. Improvement of the city's fiscal performance;
- G. Timely provision of all necessary facilities, infrastructure and public services, equal to or exceeding the more stringent of either existing or adopted levels of service, as the MPD develops; and
- H. Development of a coordinated system of pedestrian oriented facilities including, but not limited to, trails and bike paths that provide accessibility throughout the MPD and provide opportunity for connectivity with the city as a whole. (Ord. 779 § 2 Exh. 1 (part), 2005)

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18.98.030 MPD permit - Criteria for MPD eligibility.

- A. Where Required. An MPD permit shall be required for any development where:
 - 1. Any of the property within the development is subject to an MPD overlay designation on the Comprehensive Plan Future Land Use Map or an MPD zoning designation;
 - 2. The parcel or combined parcels to be included in a development total at least eighty gross acres; or
 - 3. Any of the property within the development is subject to a development agreement that requires an MPD permit to be obtained.
 - 4. Provided, however, the above provisions notwithstanding, any commercial area that is intended to be used to meet the economic objectives of an MPD and is geographically separated from the residential component of a proposed MPD may be approved through the site plan approval process of Chapter 18.16, subject to the following conditions:
 - a. the commercial area is included in an MPD application that has been determined to be complete and is identified in the application as being intended to meet the economic objectives of the MPD application;
 - b. The MPD design and development standards shall be applied, unless modified in accordance with the provisions of section 18.98.130(A);
 - c. the approved conditions shall include the requirements of section 18.98.080(A);
 - d. if the environmental review on the MPD permit application has not been completed, then, if determined appropriate, an environmental determination may be issued for the commercial area, provided the determination contains provisions that the commercial area shall still be considered for cumulative impact purposes, and appropriate additional mitigation requirements in the environmental review for the MPD application.
 - e. the provisions of the subsequent MPD approval shall apply to the site plan approval, including vesting, but only to the extent that they do not adversely impact

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complete building applications that have been submitted, or on site infrastructure improvements that have already been permitted.

B. Eligibility. Where not required under subsection A of this section the city may accept an MPD permit application, and process a development proposal as an MPD, only for contiguous properties that

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are in a single ownership, or if in multiple ownerships, specific agreements satisfactory to the city shall be signed by each property owner that place the properties under unified control, and bind all owners to the MPD conditions of approval.

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2. All properties within its proposed MPD are within the city limits or within the PAA provided that, if a proposed MPD includes lands within the PAA, approval of the entire MPD will not be granted until such time annexation of unincorporated lands is completed. C. Contiguity. All properties to be included in an MPD must be contiguous, excepting those areas intended to be used for commercial purposes, other than neighborhood commercial. (Ord. 796 § 2, 2005; Ord. 779 § 2 Exh. 1 (part), 2005)

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18.98.040 MPD permit - Application requirements.

A. Application Requirements. All applications for approval of an MPD permit shall, at a minimum, include all of the information and documents set forth in this section.

1. A set of master plan drawings, drawn at a scale as determined by the director, showing:

- a. Proposed open space, parks, recreation areas, trail networks, wildlife corridors, and perimeter buffers, and the intended ownership and acreage for each area;
- b. Existing environmentally sensitive areas and their buffers, together with the reports, surveys or delineations used to identify their locations and areas for which development within a wetland, bog, stream or its related buffer is proposed and for which mitigation or buffer averaging will be required;
- c. Proposed locations and preliminary street sections of all streets having a function higher than neighborhood access, and all pedestrian connections including trails; if the local access street section is intended to vary from the adopted City standard;
- d. Proposed sites for schools and other public facilities required to serve the development;
- e. Conceptual public utility plans (sewer, water, stormwater);
- f. Types, generalized locations, acreages, and densities of proposed residential and nonresidential development;
- g. Proposed sites for public transit facilities;
- h. Any existing easements located upon the property;

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i. Identify areas that will be protected from development by the requirements of Chapter 19.10 (Sensitive Areas Ordinance).

2. A map, drawn at a scale as determined by the director, showing property boundaries and existing topography (five-foot contour intervals), areas of vegetation by type, other natural features, and existing structures.

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3. A legal description of the MPD property, together with a title report no more than thirty days old, disclosing all lien holders and owners of record.

4. A projected phasing plan and development time schedule, regardless of intended ownership, for all development, including but not limited to, housing, stormwater

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systems, sanitary sewer facilities, public water facilities, roads, trails, commercial (including required neighborhood commercial) areas, recreational facilities, and open space, including any off-site improvements.

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5. A completed SEPA checklist, with various environmental studies and SEPA documents. If the city and the applicant have agreed that an environmental impact statement will be prepared for the proposal, a checklist shall not be required.

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6. A comprehensive fiscal analysis disclosing the short and long-term financial impacts of the proposed MPD upon the city both during development and following project completion, including an analysis of required balance of residential and commercial land uses needed to ensure a fiscal benefit to the city after project completion, and including an analysis of personnel demands and fiscal short-falls anticipated during the development phase of the MPD together with recommended mitigations to ensure that the MPD does not negatively impact the fiscal health of the city, nor the ability of the city to adequately serve existing residents, provided that if an EIS will be prepared, the fiscal analysis may be prepared concurrently.

7. A narrative description and illustrations of the MPD planning/design concept, demonstrating how the proposed MPD is consistent with the adopted MPD design standards, the comprehensive plan, all elements of sections 18.98.010 and 18.98.020, and other applicable policies and standards. If deviations from these standards are proposed, the narrative shall describe how the proposed deviations provide an equal or greater level of public benefit.

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8. Typical cross-sections of all proposed street and trail types, including landscaping, pedestrian facilities, and any other proposed improvements within the right-of-way or trail corridors.

9. A listing of all property owners of record within five hundred feet of the exterior boundaries of all parcels proposed to be included within the MPD. (When one or more of the MPD property owners own property adjacent to but not included within the MPD, the five hundred feet shall be measured from the exterior boundary of this adjacent property.). The applicant shall update the list prior to each proposed public meeting or required public mailing, as requested by the city, in order to assure a current list of all required notices.

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10. A narrative description and illustrations of how street alignments and land uses in the proposed MPD will coordinate and integrate with existing adjacent development, and adjacent undeveloped properties.

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11. A narrative description of proposed ownership and proposed maintenance program for all lands and facilities required to be shown on the master plan drawings by subsection (A)(1)(a) of this section.

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12. A proposed water conservation plan for the MPD pursuant to Section 18.98.190.

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13. If applicable, a description of any mineral (or other resource) extraction operations proposed within the MPD, the timing and phasing of the proposed operation and reclamation of the land for subsequent proposed uses.

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14. Proof of proper notice for the public information meeting.

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15. A narrative description, with reference to the drawings required by subsection (A)(1)(a) above, of how the proposal will comply with the Sensitive Areas Ordinance (Chapter 19.10);

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16. Proposed floor area ratios (FAR) for ~~both residential and~~ non-residential areas;

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17. A narrative description, with associated tables, showing the intended residential density, the number of development rights that are needed to meet the intended density, the number of development rights that are already associated with the property included within the proposed MPD boundaries, and the number of development rights that must be acquired to meet the intended density;

18. If Transfer of Development Rights are needed to attain proposed densities, a phase plan for the acquisition of ~~The originals of the development rights certificates shall be submitted, demonstrating that for each residential phase, no more than sixty percent (60%) of the proposed density is based upon the land area included in that phase. Prior to approval of implementing project actions (subdivision approval, site plan approval, etc.), the originals or documentation of the right to use development rights held in trust by the city pursuant to the terms of the Transfer of Development Rights Program (Chapter 19.24), shall be provided, showing that the development rights necessary to meet the intended density have been acquired or otherwise secured so that they will be available if the intended density is approved.~~

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B. The director shall have the authority to administratively establish additional detailed submittal requirements.

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C. The applicant shall pay all costs incurred by the city in processing the MPD permit application, including, but not limited to, the costs of planning and engineering staff and consultants, SEPA review, fiscal experts, legal services, and overall administration. A deposit in an amount equal to the staff's estimate of processing the MPD, as determined after the preapplication conference shall be required to be paid at the time of application, and shall be placed in a separate trust account. The city shall establish procedures for periodic billings to the applicant of MPD review costs as such costs are incurred, and may require the maintenance of a minimum fund balance through additional deposit requests. (Ord. 779 § 2 Exh. 1 (part), 2005)

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18.98.050 MPD permit - Required approvals.

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A. MPD Permit Required. An approved MPD permit and development agreement shall be required for every MPD.

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B. Consolidated Review. ~~An MPD permit will be allowed as~~ part of a consolidated permit action as authorized by RCW 36.70B. Consolidation shall not be allowed for comprehensive plan amendments. ~~At the city's discretion, an MPD permit may be processed concurrently with amendments to the development regulations or interlocal agreements, provided that the applicant acknowledges in writing that they assume the risk of the MPD permit application being denied or otherwise conditioned as a result of final action on any requested amendment.~~

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C. Implementing Development Applications. An MPD permit must be approved, and a development agreement as authorized by RCW 36.70B completed, signed and recorded, before the city will grant approval to an application for any implementing development approval. An application for an MPD permit may be processed with amendments to the comprehensive plan, zoning code, inter-local agreements and land development permits associated with the MPD permit, such as forest practice permits, clearing and grading permits, shorelines permits, and permits required by other public agencies. ~~The city shall not grant approvals to related permits before the granting of an MPD permit and~~

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recording of a development agreement except as provided in 18.98.030.A.4. (Ord. 779 § 2 Exh. 1 (part), 2005)

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18.98.060 MPD permit - Review process.

A. MPD Permit - Preapplication Conference, Public Information Meeting and Planning Commission Informational Meeting Required.

1. A preapplication conference between the MPD applicant or representative and staff is required before the city will accept an MPD permit application.

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a. The purpose of this conference is for the applicant to familiarize the staff with the proposed MPD, and for the staff to review with the applicant the city's submittal requirements, anticipated staffing needs, and processing procedures for MPD permit approval. The goal is to identify the city's objectives and likely issues, and to eliminate potential problems that could arise during processing of the MPD permit application prior to formal processing on the MPD permit application.

b. The applicant or representative shall present the information required as part of the MPD application. The city's intent is that the conference occurs after site inventory and analysis has been substantially completed, but prior to the completion of detailed survey, architectural or engineering work on the proposal.

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c. A nonrefundable preapplication conference fee in an amount set forth in the adopted fee schedule resolution shall be paid before the preapplication conference will be scheduled.

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d. If, at the preapplication conference, the city determines that it does not have adequate staff, space, or equipment, to process the application, then the applicant shall deposit with the city an amount sufficient for the city to hire the additional staff and/or consultants, and acquire the space and/or equipment necessary to process the application. The deposit must be made no less than four months or more than five months before the application is submitted. The public information meeting may not be scheduled until the deposit has been made. The city council may waive or shorten the four-month period if it is determined the necessary arrangements for staffing, space and equipment can be made in less than four months.

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2. After the preapplication conference has been completed, a public information meeting shall be conducted by the applicant, prior to acceptance of an MPD permit application.

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a. The applicant shall schedule and conduct a public information meeting regarding the proposed application. The public information meeting shall be conducted at City Hall, or at such other public location within the city that will accommodate the anticipated attendees. The applicant shall attend the meeting and provide information to the public regarding the proposed project, its timing, and consistency with the city's MPD code, the comprehensive plan, and other applicable city codes and regulations.

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b. The public information meeting shall not be a public hearing, but shall allow for an informal exchange of comments between the applicant and the general public. Notice of this meeting shall be provided in the newspaper of record at least fourteen days in advance of the meeting and shall be mailed to the property owners identified in subsection (B)(7)(c) of this section.

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3. After the public information meeting has been completed, a planning commission informational meeting shall be conducted. The planning commission information meeting is required before the city will accept an application for MPD permit approval.

a. The planning commission informational meeting will take place at a regular meeting of the commission. At this meeting, the applicant shall present the overall planning and design concept of the proposed MPD, and the commission shall provide preliminary feedback to the applicant regarding the consistency of this concept with the city's adopted standards, goals and policies. The planning commission may bring specific issues of interest or concern to the attention of the applicant.

b. While a public meeting, the purpose of the planning commission informational meeting is not intended for the receipt of comments from the public regarding the proposed MPD.

B. MPD Permit Public Review Process.

1. Completeness Check and SEPA. Staff shall review the MPD application for completeness and, once it is determined to be complete, provide the required notice of application. Staff will then initiate the SEPA process.

2. Optional EIS Scoping Meeting. If the responsible official makes a determination of environmental significance regarding an MPD application, staff may schedule and conduct an EIS scoping meeting. The applicant shall attend the meeting and provide information regarding the proposed project, scope, planning, timing, and the results of any relevant environmental studies performed by the applicant's consultants.

3. Staff Review. At the conclusion of the SEPA process, staff will conduct its detailed review of the proposal. This review may include requesting additional information, or proposal revisions, from the applicant.

4. Staff Report. The staff will prepare a written staff report to the hearing examiner. The completed staff report shall be sent to the hearing examiner and to the applicant at least ten calendar days prior to the public hearing.

5. Hearing Examiner Public Hearing. The city's hearing examiner shall hold a public hearing on the MPD permit application. At least fourteen calendar days prior to the public hearing, the city shall provide notice of the hearing as follows:

a. Publication in the city's newspaper of record;

b. Posting of the proposal site, in at least three locations visible from public streets or rights-of-way;

c. Mailing to owners of record of properties within five hundred feet of the perimeter of the proposed MPD per 18.98.040(A)(9); and

d. Any person(s) formally requesting notice.

6. MPD Permit Approval Criteria. The hearing examiner shall prepare recommended findings of fact, conclusions of law, and conditions of approval or a recommendation for denial for the city council's consideration, and shall transmit these to the city council within fourteen calendar days of the close of the public hearing. The examiner shall evaluate the MPD application and other evidence submitted into the record, to determine if the application, when appropriately conditioned, meets or exceeds the approval criteria set forth in section 18.98.080.

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b. There are no significant adverse environmental impacts;

c. The proposed project will have no adverse financial impact upon the city at each phase of development, as well as at full build-out. This shall include conditioning any approval so that the fiscal analysis is updated to show continued compliance with this criteria, in accordance with the following schedule;

i. If any phase has not been completed within five years, a new fiscal analysis must be done with regards to that phase before an extension can be granted, and

ii. Prior to commencing a new phase;

d. There is concurrency for all utilities and transportation system improvements prior to occupancy at each phase and at build-out;

e. The project, at all phases and at build-out, will not exceed the available city staffing or result in the lowering of city staffing levels of service established by the city, including those related to public safety;

f. The project, in each residential phase, provides a mix of housing types that allows the project to meet the percentage of affordable housing recommend(... [1]

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7. City Council. At its first regular meeting following the receipt of the hearing examiner's recommendations, the city council shall schedule a time for its consideration of the MPD. The council may:
- a. Accept the examiner's recommendation;
 - b. Remand the MPD application to the examiner with direction to open the hearing and provide supplementary findings and conclusions on specific issues; or
 - c. Modify the examiner's recommendation. If modifying the examiner's recommendation, the council shall enter its own modified findings and conclusions as needed.
8. Appeals. The council's decision with regard to an MPD permit shall be the city's final action for the purpose of any and all appeals. (Ord. 779 § 2 Exh. 1 (part), 2005)

Deleted: 1. If the MPD project is adjacent to property already developed, or being developed as an MPD, or adjacent to property which is within an MPD overlay zone, then the project is designed so that there is connectivity of trails, open spaces and transportation corridors, the designs of streetscape and public open space amenities are compatible and the project will result in the functional and visual appearance of one integrated project with the adjacent properties subject to MPD approvals.¶
So long as to do so would not jeopardize the public health, safety, or welfare, the examiner may allow the applicant to voluntarily contribute money to the city in order to advance projects to meet the city's adopted concurrency or level of service standards, or to mitigate any identified adverse fiscal impact upon the city that is caused by the project.¶

18.98.070 MPD permit - Environmental review (SEPA).

- A. Pursuant to the requirements of the State Environmental Policy Act (SEPA) and local SEPA regulations, the city shall determine whether an environmental impact statement is required for the MPD proposal. An application for an MPD permit shall include, at a minimum, a completed environmental checklist. Prior to or concurrent with application submittal, the city and the applicant may agree to prepare an environmental impact statement for the proposal.
- B. If desired by the applicant and deemed appropriate by the city, an MPD proposal may be designated by the city as a planned action pursuant to RCW 43.21C.031(2) and WAC 197-11-164 et seq.
- C. Implementing city permits and approvals, such as preliminary plats, building permits, and design reviews, shall be subject to applicable SEPA requirements. (Ord. 779 § 2 Exh. 1 (part), 2005)

18.98.080 MPD permit approval - Conditions of approval.

- A. An MPD permit shall not be approved unless it is found to meet the intent of the following criteria or that appropriate conditions are imposed so that the objectives of the criteria are met:
1. The project complies with all applicable adopted policies, standards and regulations. In the event of a conflict between the policies, standards or regulations, the most stringent shall apply unless modifications are authorized in this chapter and all requirements of section 18.98.130 have been met. In the case of a conflict between a specific standard set forth in this chapter and other adopted policies, standards or regulations, then the specific requirement of this chapter shall be deemed the most stringent.
 2. Significant adverse environmental impacts are appropriately mitigated.
 3. The proposed project will have no adverse financial impact upon the city at each phase of development, as well as at full build-out. The fiscal analysis shall also include the operation and maintenance costs to the city for operating, maintaining and replacing public facilities required to be constructed as a condition of MPD approval or any implementing approvals related thereto. This shall include conditioning any approval so that the fiscal analysis is updated to show continued compliance with this criteria, in accordance with the following schedule:

Deleted: A. The MPD permit shall contain such conditions as are necessary to ensure that the approved MPD complies with all applicable policies, standards, and objectives of the city, including the provisions of this chapter and the criteria set forth in Section 18.98.060(B)(6) of this chapter. (Ord. 779 § 2 Exh. 1 (part), 2005)¶

a. If any phase has not been completed within five years, a new fiscal analysis must be completed with regards to that phase before an extension can be granted; and

b. Prior to commencing a new phase.

4. A phasing plan and timeline for the construction of improvements and the setting aside of open space so that:

a. Prior to or concurrent with final plat approval or the occupancy of any residential or commercial structure, whichever occurs first, the improvements have been constructed and accepted and the lands dedicated that are necessary to have concurrency at full build out of that project for all utilities, parks, trails, recreational amenities, open space, stormwater and transportation improvements to serve the project, and to provide for connectivity of the roads, trails and other open space systems to other adjacent developed projects within the MPD and to the MPD boundaries; provided that, the city may allow the posting of financial surety for all required improvements except roads and utility improvements if determined to not be in conflict with the public interest; and

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b. At full build out of the MPD, all required improvements and open space dedications have been completed, and adequate assurances have been provided for the maintenance of the same. The phasing plan shall assure that the required MPD objectives for employment, fiscal impacts, and connectivity of streets, trails, and open space corridors are met in each phase, even if the construction of improvements in subsequent phases is necessary to do so.

5. The project, at all phases and at build out, will not result in the lowering of established staffing levels of service including those related to public safety.

6. Throughout the project, a mix of housing types is provided that contributes to the affordable housing goals of the City.

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7. If the MPD proposal includes properties that are subject to the Black Diamond Urban Growth Area Agreement (December 1996), the proposal shall be consistent with the terms and conditions therein.

8. If the MPD proposal includes properties that were annexed into the city by Ordinances 515 and 517, then the proposal must be consistent with the terms and conditions therein.

9. The orientation of public building sites and parks preserves and enhances, where possible taking into consideration environmental concerns, views of Mt. Rainier and other views identified in the comprehensive plan. Major roads shall be designed to take advantage of the bearing lines for those views.

10. The proposed MPD meets or exceeds all of the public benefit objectives of 18.98.020 and the MPD purposes of 18.98.010, B through M.

11. If the MPD project is adjacent to property already developed, or being developed as an MPD, or adjacent to property which is within an MPD zone, then the project is designed so that there is connectivity of trails, open spaces and transportation corridors, the design of streetscape and public open space amenities are compatible and the project will result in the functional and visual appearance of one integrated project with the adjacent properties subject to an MPD permit or, if not yet permitted, within an MPD zone.

12. As part of the phasing plan, show open space acreages that, upon buildout, protect and conserve the open spaces necessary for the MPD as a whole. Subsequent implementing approvals shall be reviewed against this phasing plan to determine its consistency with open space requirements.

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13. Lot dimensional and building standards shall be consistent with the MPD Design Guidelines.

14. School sites shall be identified so that all school sites meet the walkable school standard set for in the comprehensive plan. The number and sizes of sites shall be designed to accommodate the total number of children that will reside in the MPD through full build out, using school sizes based upon the applicable school district's adopted standard. The requirements of this provision may be met by a separate agreement entered into between the applicant, the city and the applicable school district, which shall be incorporated into the MPD permit and development agreement by reference.

B. So long as to do so would not jeopardize the public health, safety, or welfare, the city may, as a condition of MPD permit approval, allow the applicant to voluntarily contribute money to the city in order to advance projects to meet the city's adopted concurrency or level of service standards, or to mitigate any identified adverse fiscal impact upon the city that is caused by the proposal.

18.98.090 MPD permit - Development agreement.

The MPD conditions of approval shall be incorporated into a development agreement as authorized by RCW 36.70B.170. This agreement shall be binding on all MPD property owners and their successors, and shall require that they develop the subject property only in accordance with the terms of the MPD approval. This agreement shall be signed by the mayor and all property owners and lien holders within the MPD boundaries, and recorded, before the city may approve any subsequent implementing permits or approvals (preliminary plat, design review, building permit, etc.) (Ord. 779 § 2 Exh. 1 (part), 2005)

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18.98.100 MPD permit - Amendments to an approved MPD permit.

An applicant may request an amendment to any element or provision of an approved MPD. All applications for amendments shall be deemed either "minor" or "major." An amendment application shall be considered minor if it meets all of the following criteria:

A. Would not increase the total number of dwelling units in an MPD above the maximum number set forth in the approved MPD permit or reduce the number by more than ten percent;

B. Would not increase the total floor area of nonresidential uses by more than ten percent;

C. Would not decrease the minimum, or increase the maximum density for residential areas of the MPD beyond density ranges approved in the MPD permit;

D. Would not decrease the approved amount of open space or recreation space;

E. Would not increase any adverse environmental impact, provided that additional environmental review may be required to determine whether such change is likely to occur;

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F. Would not adversely impact the project's fiscal projections to the detriment of the city;

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G. Would not significantly impact the overall design of the approved MPD; and

H. Would not ~~significantly~~ alter the size or location of any designated open space resulting in a lowered level of service and does not reduce the total amount of required open space.

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I. Minor amendments may be approved administratively in accordance with the procedure set forth in the MPD development agreement, where applicable. Any amendment application that is not "minor" shall be deemed to be major. The final determination regarding whether an amendment is "minor" or "major" shall rest with the director, subject to appeal to the hearing examiner. Applications for major modifications shall be reviewed by the same procedures applicable to new MPD permit requests. The city, through the development agreement for the approved MPD, may specify additional criteria for determining whether a proposed modification is "major" or "minor", but the criteria listed in this section cannot be modified or reduced in a development agreement. (Ord. 779 § 2 Exh. 1 (part), 2005)

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18.98.110 MPD standards - Design review required.

A. Design Standards. The MPD master plan and each subsequent implementing permit or approval request, including all proposed building permits, shall be consistent with the MPD design standards that are in effect at the time each application is determined to be complete.

B. Design Review Process.

1. MPD Permit. The hearing examiner shall evaluate the overall MPD master plan for compliance with the MPD design standards, as part of the examiner's recommendation to the city council on the overall MPD permit.

2. Implementing Permits or Approvals - Residential Subdivisions. Each residential subdivision that is part of an approved MPD shall be reviewed, at the time of preliminary plat review for compliance with the city's MPD design standards. This review shall include typical elevations, and exterior material samples for the single-family residences and other structures to be built on the subdivided lots. This review shall be merged with the hearing examiner's review of the preliminary plat.

3. Implementing Permits or Approvals - Short Subdivisions (Short Plats). Short subdivisions (short plats) within an approved MPD shall be reviewed by the director for compliance with the city's MPD design standards as required in (2) above.

4. Implementing Permits or Approvals - Residential Building Permits Staff shall administratively review residential building permit applications in approved and recorded subdivisions and short subdivisions for consistency with the MPD design guidelines.

5. Implementing Permits or Approvals - Other Building Permits. All other structures shall be reviewed by the director for compliance with the MPD design standards. The director shall make a decision on the proposal's compliance with the MPD design standards and adopt findings, conclusions and, where applicable, conditions of approval. Building permit applications that are found to be not consistent with the approved design standards shall be rejected, subject to appeal to the hearing examiner.

6. Future Project Consistency. The decision-maker shall not approve a preliminary plat or short plat, or issue a building permit or site plan review approval for a parcel located within an MPD, unless the city has found that the proposal is consistent with applicable MPD design standards. (Ord. 779 § 2 Exh. 1 (part), 2005)

18.98.120 MPD standards - Permitted uses and densities.

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A. MPDs shall include a mix of residential and nonresidential use. Residential uses shall include a variety of housing types and densities.

~~B. The MPD shall include those uses shown or referenced for the applicable parcels or areas in the comprehensive plan, and shall **may** also provide neighborhood commercial uses, as defined in the comprehensive plan, sized and located to primarily serve the residential portion of the MPD.~~

Deleted: B. Each MPD shall contain sufficient affordable housing, in each residential phase, in order to provide the percentage of affordable housing recommended in the county-wide planning policies.

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~~C. The MPD shall, within the MPD **boundary**, or elsewhere within the city, provide for sufficient **properly** zoned lands, and include sufficient incentives to encourage development as permit conditions, so that the employment targets set forth in the comprehensive plan for the number of proposed residential units within the MPD, will, with reasonable certainty, be met before full buildout of the residential portion of the MPD.~~

~~E. Property that is subject to a preannexation agreement, development agreement or annexation ordinance conditions relating to residential density will have as its base density the minimum density designated in such agreement or ordinance. All other property will have as its base density the minimum density designated in the comprehensive plan.~~

~~F. The council may authorize a residential density of up to 12 dwelling units per acre so long as all of the other criteria of this chapter are met, the applicant has elected to meet the open space requirements of section 18.98.140(G), or otherwise is providing the open space required by section 18.98.140(F), and the additional density is acquired by participation in the TDR program. In any development area within an MPD, for which the applicant has elected to meet the open space requirements of section 18.98.140(G) or is otherwise meeting the open space requirement of 18.98.140(F), ~~the an effective density of development~~ 12 dwelling units per acre, up to a maximum of 18 dwelling units per gross acre may be approved, so long as the total project cap density is not exceeded and the development, as situated and designed, is consistent with the provisions of 18.98.010 and 18.98.020. A MPD may include multi-family housing at up to 30 dwelling units per gross acre, subject to the following:~~

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- ~~1. Areas proposed for development at more than 18 dwelling units per gross acre shall be identified on the MPD plan; and~~
- ~~2. Identified sites shall be located within ¼ mile of shopping/commercial services or transit routes; and~~
- ~~3. The maximum building height shall not exceed 45 feet ; and~~
- ~~4. Design guidelines controlling architecture and site planning for projects exceeding 18 dwelling units per gross acre shall be included in the required development agreement for the MPD; and~~
- ~~5. Residential uses located above ground floor commercial/office uses in mixed use areas within a MPD are not subject to a maximum density, but area subject to the maximum building height, bulk/massing, and parking standards as defined in the design guidelines approved for the MPD. No more than two floors of residential uses above the ground floor shall be allowed.~~

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G. Unless the proposed MPD applicant has elected to meet the open space requirements of section 18.98.140(G), or is otherwise meeting the open space requirements of section 18.98.140(F), the following conditions will apply, cannot be varied in a development agreement, and shall preempt any other provision of the code that allows for a different standard:

- 1. clustering of residential units shall not be allowed;
- 2. residential density shall not exceed four (4) dwelling units per acre in any location;
- 3. the lot dimension requirements of 18.44.040 shall be met.

18.98.130 MPD standards - Development standards.

A. Where a specific standard or requirement is specified in this chapter, then that standard or requirement shall apply. Where there is no specific standard or requirement and there is an applicable standard in another adopted city code, policy or regulation, then the MPD permit and related development agreement may allow development standards different from set forth in other chapters of the Black Diamond Municipal Code, if the proposed alternative standard:

- 1. Is needed in order to provide flexibility to achieve a public benefit; and
- 2. Furthers the purposes of this chapter and achieves the public benefits set forth in section 18.98.010; and
- 3. Provides the functional equivalent and adequately achieves the purpose of the development standard from which it is intended to deviate.

B. Any approved development standards that differ from those in the otherwise applicable code shall not require any further zoning reclassification, variances, or other city approvals apart from the MPD permit approval.

18.98.140 MPD standards - Open space requirements.

A. Open space is defined as, wildlife habitat areas, perimeter buffers, environmentally sensitive areas and their buffers, and trail corridors. It may also include developed recreation areas, such as golf courses, trail corridors, playfields, parks of one-quarter (1/4) acre or more in size, pocket parks that contain an active use element, those portions of school sites devoted to outdoor recreation, and stormwater detention/retention ponds that have been developed as a public amenity and incorporated into the public park system. An MPD application may proposed other areas to be considered as open space, subject to approval. It shall not include such space as vegetative strips in medians, isolated lands that are not integrated into a public trail or park system, landscape areas required by the landscape code, and any areas not open to the public, unless included within a sensitive area tract as required by the chapter 19.10.

B. Natural open space shall be located and designed to form a coordinated open space network resulting in continuous greenbelt areas and buffers to minimize the visual impacts of development within the MPD, and provide connections to existing or planned open space networks, wildlife corridors, and trail corridors on adjacent properties and throughout the MPD.

C. The open space shall be located and designed to minimize the adverse impacts on wildlife resources and achieve a high degree of compatibility with wildlife habitat areas where identified.

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- Deleted: Open space shall be calculated based on the gross acreage of the MPD; provided, this requirement shall not apply to property within the city's potential annexation areas as identified in the 1996 Black Diamond urban growth area agreement so long as the open space identified in that agreement that is located within the project boundaries remains permanently protected.
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D. The approved MPD permit and development agreement shall establish specific uses for open space within the approved MPD.

E. The approved MPD permit and development agreement shall establish which open space shall be dedicated to the city, which shall be protected by conservation easements, and which shall be protected and maintained by other mechanisms. (Ord. 779 § 2 Exh. 1 (part), 2005)

F. An approved MPD shall contain the amount of open space required by any prior agreement.

G. If an applicant elects to provide fifty percent (50%) open space, then the applicant may be allowed to vary lot dimensions as authorized elsewhere in this chapter, cluster housing, and seek additional density as authorized in Section 18.98.120(F).

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18.98.150 MPD standards - On-site recreation and trail requirements.

A. An MPD shall provide on-site recreation areas and facilities sufficient to meet the needs of MPD residents, exceeding or at a minimum consistent with levels of service adopted by the city where applicable. This shall include providing for a coordinated system of trails and pedestrian linkages both within, and connecting to existing or planned regional or local trail systems outside of the MPD.

B. The MPD permit and development agreement shall establish the sizes, locations, and types of recreation facilities and trails to be built, and also shall establish methods of ownership and maintenance. (Ord. 779 § 2 Exh. 1 (part), 2005)

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18.98.155 MPD standards – sensitive areas.

A. The requirements of the Sensitive Areas Ordinance (BDMC 19.10) shall be the minimum standards imposed for all sensitive areas.

B. All development, including road layout and construction, shall be designed, located and constructed to minimize impact of wildlife habitat and migration corridors. This shall include minimizing use of culverts in preference to open span crossings.

18.98.160 MPD standards - Transfer of development rights.

A. All proposed transfers of development rights shall be consistent with the TDR program (Chapter 19.24). An MPD permit and development agreement shall establish the TDR requirements for a specific MPD. Maximum allowable MPD residential densities can only be achieved through participation in the city's TDR program as a receiving site. (Ord. 779 § 2 Exh. 1 (part), 2005)

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B. Property that is subject to a preannexation agreement, development agreement or annexation ordinance conditions relating to residential density will have as its base density the density designated in such agreement or ordinance. All other property will have as its base density the minimum density designated in the comprehensive plan.

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18.98.170 MPD standards - Street standards.

A. Street standards shall be consistent with the MPD design guidelines, which may deviate from city-wide street standards in order to incorporate "low impact development"

concepts such as narrower pavement cross-sections, enhanced pedestrian features, low impact stormwater facilities, and increased connectivity or streets and trails. Any increased operation and maintenance costs to the city associated therewith shall be incorporated into the fiscal analysis.

B. The street layout shall be designed to preserve and enhance views of Mt. Rainier or other views identified in the city's comprehensive plan to the extent possible without adversely impacting sensitive areas and their buffers.

C. The approved street standards shall become part of the MPD permit approval, and shall apply to public and private streets in all subsequent implementing projects except when new or different standards are specifically determined by the city council to be necessary for public safety. (Ord. 779 § 2 Exh. 1 (part), 2005)

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18.98.180 MPD standards - Stormwater management standards.

A. The stormwater management system shall enhance the adopted standards that apply generally within the city, in order to implement the concepts in sections 18.98.010(C), (H), and (L), 18.98.020(B) and (C), and 18.98.180(C). The stormwater detention system shall be publicly owned. Provided, in non-residential areas, the use of private vaults and filters may be authorized where: 1) the transmission of the stormwater by gravity flow to a regional system is not possible and 2) there is imposed a maintenance/replacement condition that requires vault filters to be regularly inspected and maintained by the property owner.

B. The stormwater management system shall apply to public and private stormwater management systems in all subsequent implementing projects within the MPD, except when new or different standards are specifically determined by the city council to be necessary for public health or safety, or as modified as authorized in section 18.98.195(B).

C. Opportunities to infiltrate stormwater to the benefit of the aquifer, including opportunities for reuse, shall be implemented as part of the stormwater management plan for the MPD. (Ord. 779 § 2 Exh. 1 (part), 2005)

D. The use of small detention/retention ponds shall be discouraged in favor of the maximum use of regional ponds within the MPD, recognizing basin constraints. Ponds shall be designed with shallow slopes with native shrub and tree landscaping and integrated into the trail system or open space corridors whenever possible. Small ponds shall not be allowed unless designed as a public amenity and it is demonstrated that transmitting the stormwater to a regional pond within the MPD is not technically feasible.

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Deleted: The city shall review the proposed standards as part of the MPD permit review process. The approved standards shall become part of the MPD permit approval, and shall apply to public and private stormwater management systems in all subsequent implementing projects within the MPD, except when new or different standards are specifically determined by the city council to be necessary for public health or safety.¶

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18.98.190 MPD standards - Water and sewer standards.

A. An MPD shall be served with public water and sanitary sewer systems that:

1. Employ innovative water conservation measures including metering technologies, irrigation technologies, landscaping and soil amendment technologies, and reuse technologies to reduce and/or discourage the reliance upon potable water for nonpotable uses including outdoor watering.

2. Are designed in such a way as to eliminate or at a minimum reduce to the greatest degree possible the reliance upon pumps, lift stations, and other mechanical devices and their associated costs to provide service to the MPD.

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B. Each MPD shall develop and implement a water conservation plan to be approved as part of the development agreement that sets forth strategies for achieving water conservation at all phases of development and at full buildout, that results in water usage that is at least ten percent less the average water usage in the city for residential purposes at the time the MPD application is submitted. For example, if the average water usage is 200 gallons per equivalent residential unit per day, then the MPD shall implement a water conservation strategy that will result in water use that is 180 gallons per day or less per equivalent residential unit. (Ord. 779 § 2 Exh. 1 (part), 2005)

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18.98.195 Vesting.

A. Except to the extent earlier terminated, modified by the provisions of this chapter, or as otherwise specified in the conditions of approval, the MPD permit approval vests the applicant for fifteen years to all conditions of approval and to the development regulations in effect on the date of approval.

B. Vesting as to stormwater regulations shall be on a phase by phase basis.

C. Vesting as to conditions necessary to meet the fiscal impacts analysis criteria required by Section 18.98.060(B)(6)(c) shall only be for such period of time as is justified by the required updated analysis. (Ord. 779 § 2 Exh. 1 (part), 2005)

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D. Building permit applications shall be subject to the building codes in effect at the time a building permit application is deemed complete.

E. The council may grant an extension of the 15 year vesting period for up to five years for any phase so long as the applicant demonstrates with clear and convincing evidence that all of the following are met:

1. The phase approval has not been revoked in accordance with the provisions of section 18.98.200;

2. The failure to obtain the implementing entitlement approval for the applicable phase is a result of factors beyond the applicant's control;

3. The granting of an extension will not adversely impact any of the purposes or public benefit provisions of this chapter; and

4. The city has not adopted ordinances of general application that impose a more stringent development standard than those in effect for the phase for which a time extension is requested or, in the alternative, the applicant agrees to comply with the more stringent standard.

Any request for an extension shall be considered as a major amendment to the MPD. The council may impose such additional conditions to the phases as it deems appropriate to further the purposes and public benefit objectives of the MPD code in light of the number of years that have passed since the original MPD permit approval and taking into consideration the effectiveness of the exiting permit conditions in meeting those purposes and public benefit objectives.

18.98.200 Revocation of MPD permit.

The city council may amend or revoke any or all conditions of MPD approval, after public hearing and notice under the following circumstances:

A. If the MPD permit allowed for phasing and the implementing action (i.e., final plat approval, site plan approval, etc.) for the development of the next phase has not been

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approved within five years of the approval of the previous phase or, in the case of the first phase, from the original MPD approval and an extension of said phase has not been previously granted. An extension may be granted for up to an additional two years on such additional conditions as the council determines are necessary in order to assure that the extension does not adversely impact the intent and purpose of the initial MPD approval.

B. A condition of the MPD approval has been violated and the violation has not been corrected after sixty days notice of the violation unless said violation can be corrected through the use of a duly posted performance or maintenance bond provided at the time of MPD approval.

C. A violation of an MPD condition of approval that cannot be corrected, such as the destruction of wetlands or removal of trees and vegetation that was specifically prohibited and cannot be restored to their original state within sixty days, ~~unless otherwise determined by the Director.~~

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D. The MPD permit has been approved for more than five years and the city council finds that further development will present a threat to the public health, safety and welfare unless the amendment or revocation is implemented; provided, however, the city shall first determine that the condition cannot be amended in order to eliminate the threat to the public health, safety or welfare before it revokes the permit approval.

The above provisions notwithstanding, the vacation and/or amendment of the MPD approval shall not affect previously approved building permits. (Ord. 779 § 2 Exh. 1 (part), 2005)

E. If the MPD permit is revoked for undeveloped phases, the parcels for which the permit is revoked cannot be developed without a new MPD permit being obtained, even if the revoked parcels are less than the minimum acreage required by section 18.98.030.

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- a. The city's adopted policies and regulations, including, but not limited to, the municipal code, comprehensive plan, public works standards, critical areas regulations, MPD ordinance and MPD design standards. In event of a conflict between the policies, standards, objectives, or regulations the most stringent shall apply unless modifications are authorized in the MPD ordinance and design standards;
- b. There are no significant adverse environmental impacts;
- c. The proposed project will have no adverse financial impact upon the city at each phase of development, as well as at full build-out. This shall include conditioning any approval so that the fiscal analysis is updated to show continued compliance with this criteria, in accordance with the following schedule:
 - i. If any phase has not been completed within five years, a new fiscal analysis must be done with regards to that phase before an extension can be granted, and
 - ii. Prior to commencing a new phase;
- d. There is concurrency for all utilities and transportation system improvements prior to occupancy at each phase and at build-out;
- e. The project, at all phases and at build-out, will not exceed the available city staffing or result in the lowering of city staffing levels of service established by the city, including those related to public safety;
- f. The project, in each residential phase, provides a mix of housing types that allows the project to meet the percentage of affordable housing recommended under the county-wide planning policies;
- g. For those portions of a proposed MPD that have comprehensive plan land use designations, the ratio of residential to commercial land uses within the MPD shall be the same as designated on the comprehensive land use map unless the required fiscal study supports or requires a different ratio of residential to commercial land uses;
- h. If the MPD proposal includes properties that are subject to the Black Diamond urban growth area agreement (December 1996) then the proposal is consistent with the terms and conditions therein;
- i. If the MPD proposal includes properties that were annexed into the city by Ordinances 515 and 517 then the proposal must be consistent with the terms and conditions therein;
- j. The orientation of public building sites or parks shall preserve view corridors of Mt. Rainier or other view corridors identified in the city's comprehensive plan;
- k. The proposed MPD meets or exceeds all of the public benefit objectives of Section 18.98.020 of this chapter, and the MPD purposes set forth in Section 18.98.010(B) through (M) of this chapter;

, and shall take place at the same meeting at which the planning commission holds its public hearing on the plat. The city shall merge its public notice of the design review with the required public notice of the preliminary plat hearing, utilizing the notice requirements for that hearing, as set forth in divisions of land, Title 17 Black Diamond Municipal Code. The city's planning/design commission shall make a recommendation to the city council on the plat's compliance with the MPD design standards, including, but not limited to, the compliance of the proposed street layout and schematic design of the proposed residential structures. This recommendation shall be forwarded to the council in conjunction with the planning commission's recommendation on the preliminary plat.

The planning/design commission shall adopt findings, conclusions and, where applicable, recommended conditions of approval with respect to the proposed subdivision's compliance with the city's MPD design standards. Individual detached single-family residential structures on lots seven thousand two hundred square feet or greater in size are subject to administrative review for compliance with the city MPD design standards but are exempt from the planning/design commission schematic drawing review process set forth above.

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. This review shall include typical schematic drawings (floor plans, elevations, and exterior material samples) for the single-family residences and other structures to be built on the subdivided lots. This review shall take place at a regular public meeting of the commission. The city shall provide public notice of the design review at least fourteen business days prior to the scheduled commission meeting, by publishing a notice in the city's newspaper of record, and posting the site in at least three locations visible from an adjacent public street or right-of-way. Mailed notice to individual adjacent property owners is not required. The commission shall make a decision on the short plat's compliance with the MPD design standards, including but not limited to the compliance of the proposed lot layout and schematic design of the proposed residential structures. The commission shall adopt findings, conclusions and, where applicable, conditions of approval. This decision shall be final unless appealed to the city council within fourteen days of the city's issuance of a notice of decision.

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in Approved Subdivisions or Short Subdivisions. Within an approved MPD, the city

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No public notification is required for this administrative design review. Applications for single-family residential structures that are found to be not consistent with the approved schematic drawings, or for which no schematic approval took place (other than individual detached single-family residential structures on lots seven thousand two hundred square feet or greater in size), shall be referred to the planning/design commission for its review.

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(including but not limited to commercial and multifamily buildings) within an approved MPD

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This review shall be made on schematic drawings (floor plans, elevations, and exterior material samples), site plans, and landscape plans for the proposed structure or structures. This review shall use the process, notice, and appeal provisions described in subsection (B)(3) of this section.

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, including, but not limited to, the compliance of the proposed site and landscape plans, and design of the proposed structure(s). The commission shall

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schematic drawings, or for which no schematic approval took place,

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shall be referred to the planning/design commission for its review.

