



AGENDA

Planning & Community Service Committee Meeting
Public Works Conference Room
24301 Roberts Drive, Black Diamond, WA

Date: Tuesday, March 10, 2015
Time: 4:00 – 5:00 p.m.

Attendees: Councilors Edelman (Chair) & Morgan, Mayor Benson & City staff

-
- 1. Planning and Community Development Fee Schedule Update Discussion – No Action Planned.**

 - 2. New Section of BDMC 18.14 Vesting, Discussion – Potential Action.**

 - 3. Update on Building Division Staffing Re-Assignment – No Action Planned.**

 - 4. Adjournment**
-

Fee Title	Description	Current Fees	Proposed New Fees	Previous #
POLICE				
Fingerprinting	Non-Resident	\$15		5
	Resident	\$10		6
Electronic Monitoring-Police	Per Day, Payable In Advance	\$17/day		7
	One Time Application Fee			
Hook-up Fee	(Non Refundable	\$25		8
	Within 20 Mile Radius	Current IRS Rate		9
	Outside 20 Mile Radius	Current IRS Rate		10
Equipment Deposit	Refundable	\$350		11
Concealed Pistol License				12
Original	Original License	\$52.50		13
Renewal	Valid License Renewal	\$32		14
	Within 90 Days After			
Late	Expiration	\$42		15
Replacement		\$10		16
Process Service		\$25		17
Mileage for process service		Current IRS Rate		18
False Alarm Responses				19
	First Occurrence	None		20
	Second Occurrence Per Year	\$50		21
	Third or More Per Year	\$75		22
	No Charge For One Copy of Documents Provided In Compliance With Defense Requests On Municipal Court Cases.			
Discovery --copies		None		23
		Contract w/ Public Safety Testing Cost +		
Civil Service Testing	Per Applicant	10%		24
Traffic Safety School	Per Class	\$200		25
Booking Processing Fee	Per Booking	Contract Fee		26
Police Reports	Per Case Reports	\$.15/page		27
Photographs				29
Copies	Each	\$0.15		30
CD Reproduction	Each	\$1.50		31
Firearms Clearance Letter	For Foreign Countries	\$15		32
Local Record Clearance Letter	In-House Records Check	\$15		33
	Screening fee (non-refundable)			
Work Crew		\$25		34

	Per Day, State Fee	\$15	35
Work Release	Per Day, Payable in Advance	Per Contract	36
PASSPORTS			
Passport fee check is made payable to the US Department of State. The execution fee check is made payable to the ????			
Passport Book			430
Passport Fee**	Age 16 and over	\$110	431
Execution Fee		\$25	432
		Total \$135	433
Passport Fee**	Under age 16	\$80	434
Execution Fee		\$25	435
		Total \$105	436
Passport Card			437
Passport Fee**	Age 16 and over	\$30	438
Execution Fee		\$25	439
		Total \$55	440
Passport Fee**	Under age 16	\$15	441
Execution Fee		\$25	442
		Total \$40	443
Expediting Fee (Book only)		\$60	444
File Search Fee		\$150	445
Overnight Delivery Return Fee		\$12.72	446
Overnight Delivery Fee to Agcy.		\$19.95	447
**Other conditions and restrictions may apply. See City Clerk's office for more details.			
			448
BUSINESS LICENSES			
		Initial fee \$70	
Regular Business License	Annual	renewal \$60	364
Regular Business License Annual partial	Pro-rate: 50% fee reduction after June 30.	\$35	365
Temporary Business License (30 days)	per 30 day license, maximum of 2 per year	\$15	366
Duplicate Business License	per copy	\$10/copy	367
Relocation/Reissue	Business moves locations	\$10	368
	Pro-rate: 50% fee reduction after June 30.		369
Specialty Licenses			370
Pawnbroker	Yearly	\$100	\$150 371
Firearms Dealer	Federal Firearms License, yearly	\$125	372
Solicitors and mobile vendors	Annual	\$70	373
	Temporary (30 day)	\$50	374
Adult Entertainment	Per establishment	\$1,000	375

per establishment	Operator license	\$100		376
	Employees license	\$50		377
Utility Business license	Annual	\$60		378
Penalty Late Renewal Payment	Feb. 1-28	\$10		379
	Mar. 1-31	\$20		380
	Apr. 1-30	\$30		381
	May 1 and after		double renewal fee, collections	382
UTILITIES				
	No Meter Present or			
Unauthorized connection	Bypassing	\$1,200		86
		Cost + actual		
Meter Testing Charge		staff time		87
	After Business Hours, 2 hour	Time at current		
Customer Requested Turn Off	minimum	rate	\$175	88
	City Water, Sewer and			
	Stormwater only (excluding			
Lifeline Utility Relief Rate	KC Metro)	50%		89
Drop In Meter Charges				90
5/8" meter	City Installed	\$500		91
3/4" meter	City Installed	\$500		92
1" meter	City Installed	\$600		93
		meter cost +		
1 1/2" meter thru 6" meter	City Installed	10%		94
Irrigation 5/8" meter	City Installed	\$500		95
	Homeowner Incurs ALL Costs,			
In-Fill Lots Installation of Water	Plus Deposit per BDMC			
Service Charges	13.040.050	Deposit \$1,000		96
Water Service Line				
Review/Inspection Fee		\$110	\$138	97
Door Hanger charge,10 day warning		\$10		98
Door Hanger w/Shut Off/Turn On	During Working Hours 8-5	\$20	\$45	99
		1 1/2 time, 2 hr.		
	After Working Hours	minimum	\$75	100
		Double time, 2		
	Holidays	hr minimum	\$100	101
Lien Filing			\$180	102
Lien Release		\$120	\$180	103
Lien Legal Cost			Actuals + 10%	104
Meter Rental/Water Purchase	Collect Deposit Connect fee, rental	Deposit \$1,000		105
	Base Rental Fee Plus Double the Current Water Rate	Rental per day \$25		106

	Base Rental Fee Plus Double the Current Water Rate	Rental per week \$100	107
See BDMC 13.04.280	Base Rental Fee Plus Double the Current Water Rate	Rental, per month \$250	108
Non Account Water Purchase		Double out of city rates	40
Emergency Repair	Working hours-if prior locate	Time and Materials 3 times	134
	Working hours-if no locate	Time and Materials 1 1/2	135
	After hours, if prior locate	Time and Materials 3 times 1 1/2	136
	After hours, no locate	Time and Materials Double	137
	Holidays	Time to above rates	138

PARKS

Park Use Permit	Per Event		422
Parking fee at boat launch	Per vehicle	\$5	423
Annual parking pass - Lake Sawyer	Per vehicle (non-transferable)	\$60	424
Annual parking pass - Lake Sawyer	Per vehicle for senior citizens 65 years and older	\$35	425
Annual parking pass - Lake Sawyer	Per vehicle for persons with a valid State of Washington Disable Vehicle Permit	\$35	426
Lost parking pass replacement or change in vehicle		\$10	427
Special Event Camping	Deposit? How much? When?		428

CEMETERY

Casket Burial	Coordination, Excavation; Liner and Installation; Casket Placement; Backfill and compaction; Landscaping Excavation and Setting According to Cemetery Standards	\$500 1,500	140
Headstone Placement		\$100 200	141
Liner Cost		\$288 Included in Burial	142
Liner Setting Fee		\$250 Included in Burial	143

Liner Pickup and Delivery Fee		\$100 Included in Burial	144
Tent For Service In The Rain Vault	Set Up The Tent, Take Down, Dry in the Warehouse		200 145
		Cost + 10%	146
Saturday Service Fee	Additional Charge to be Added to Burial Costs	\$1,000	147
Placement of Cremated Remains	Site Measurements, Location Records, Excavation and Restoration	\$100	200 148
Saturday Placement of Remains		\$250	350 149
Purchase a Plot		\$1,500	150
Double Plot Purchase		\$2,500	151
Niche Purchase		\$325	152
Niche Remain Placement	Open/Close; Secure and Record	\$100	153
Headstone Placement	Normal Up To 44" x 20" (880 sq. in.)	\$100	154
Headstone Placement-Large	Larger than 44"x20" (example 45"x21") 45x21=945 sq. in. 945-880=65 65 sq. in. x \$1.50=\$97.50	\$.15 Per Additional Square Inch	\$.50 Per Square Inch In Excess of 880 Sq. In. \$5,000 or Actual Contract Cost Whichever Is Greater
Exhumation		Lesser of \$5,000 or Actual Contract Cost	155 156
MISCELLANEOUS FEES			
Photocopying	Materials copied on the copier on legal, letter or ledger size paper (includes packet material, ordinances, resolutions, minutes, contracts, etc.	\$.15/page	451
Oversized Documents	per page, black & white	\$5	452
	per page, color	\$7	453
Duplication Audio Tapes/CDs	Per tape/CD	\$1.50	454
CD or DVD Disk	Per disk	\$1.50	455
Transcription Preparation	Staff Time	Actual cost	456
	Deposit	\$300	457
City Clerk Certification of Documents	Per page	\$1	458
King Co. Recording Fee	Per page, pass through King County fees	Actual cost from King County	459

Return check fee		\$35		460
Postage		Cost +10%		472
City of Black Diamond Maps				461
	oversized 18x 24 or larger			
	(Black and White)	\$3	\$5	462
	Color	\$3	\$7	463
	11 x 17	\$3		464
Code/Comprehensive Planning				
Documents Reproduction		\$50	Cost +10%	465
Zoning Code		\$50	Cost +10%	466
Comprehensive Plan		\$85	Cost +10%	467
Water Comprehensive Plan		\$80	Cost +10%	468
Sewer Comprehensive Plan		\$80	Cost +10%	469
		Current		
Municipal Code		Publishing Rate	Cost +10%	470
		3rd Party		
Public Notice Boards (BDMC 18.08)		Vendor Charge	Cost +10%	471
Special Event Permit				473
1 day event		No Charge		474
		\$200 + hourly		
Multi-Day event-Council approval		Staff Time		475
Outside Consultants	Also in city staff	\$10	\$40	476
Liquor Use Permit		\$25		477
CITY STAFF RATES				
All rates are per hour				
City Administrator		\$94		385
Assistant City Administrator/City				
Clerk/Human Resources Manager		\$84		386
Deputy City Clerk		\$50	\$51	387
Finance Director		\$70	\$81	388
Deputy Finance Director		\$58	\$60	389
Senior Accountant		\$40	\$54	390
Community Development				
Director/Natural Resources Director		\$73	\$81	391
Permit Technician Supervisor		\$54		392
Permit Technician		\$44	\$47	393
Economic Development Director		\$75	\$78	394
Building Official/Code Official		\$75 per contract + 10%		396
Building Plans Examiner		\$73 per contract + 10%		397
Fire Inspector			\$45	398
Public Works Director		\$80	\$81	399
Public Works Administrative				
Assistant III		\$51	\$50	400

Utilities Supervisor		\$76	\$76	401
Utility Operator		\$47	\$48	402
Utility Worker		\$44	\$45	403
Seasonal Worker			\$22	404
Facilities Coordinator		\$51	\$52	405
Police Chief		\$89	\$89	406
Police Commander		\$51	\$84	407
Police Officer with vehicle		\$75	\$85	408
Senior Planner		\$48	\$68	409
Information Services Manager		\$73 per contract + 10%		410
MDRT Inspector/Construction Superintendent		\$73/hour	\$78	411
MDRT Senior Planner		\$28	\$68	412
Clerical Staff		\$28	\$31	413
Engineer		per contract + 10%/hour	per contract + 10%	414
City Attorney		per contract + 10%/hour		415
Landscape Architect		per contract + 10%/hour		416
Consultant Planner		per contract + 10%/hour		417
Other Consultants/Contract.		10%/hour	\$1,000	418
Hearing Examiner	Hearing Fee	\$788		419
		Hourly Rate +		
	Actual Costs	10%		420
SIGNS/TREE				
Wall Sign electric		\$125-\$225		48
Wall Sign, non electric		\$105-\$205		47
Ground, non electric		\$145-\$245		49
Ground electric		\$165-\$265		50
All signs less than 25 sf		\$95	\$407	51
Change of sign, all sizes		\$95	\$413	52
Street Signs Charge	Sign Post	Cost + 10%		81
	Installation	Hourly Rate	\$138	82
Tree Permit	Level 1 application fee	\$263	\$267	214
	Level 2 application fee	\$525	\$487	215
	Exemption Review	\$100	\$110	216
Fireworks Display	Plan review and inspection fee	per contract + 10%		353
Temporary Fireworks Stand	Permit fee	\$100		354
	Removal bond-refundable	\$750		355

LAND USE AND DEVELOPMENT

Public Works-Streets

Right-of-Way Use Permit	Base Amount CD Fee plus 2 inspections and 1/2 hour City Review		\$60	75
Right-of-Way Extra Inspection	1 hour minimum	\$263	\$138	76
Right-of-Way Extra City Staff Review	1 hour minimum Does Not Include ---Cost	\$110	\$138	77
Fines	Work Without a Permit	\$50		78
Street Cleaning		\$1,000		79
		Cost + 10%		80
Right-of-Way Vacations Processing	Application Fees	\$788	\$1,000	
ULID or LID	City Costs	Actual cost + 10%		
Clear and Grading Permit	Plan Review-per single family lot	\$35		54
Clearing and Grading Permit Fee	Inspection Fee-per single family lot	\$110	\$138	55
	Permit Fee	\$200		115
	Inspection Fee	5% of total cost of the project	\$138	116
	Plan Review Fee			117
	Clearing Only	\$74		118
	0-50 Cubic Yards	\$137		119
	51-100 Cubic Yards	\$252		120
	101-1,000 Cubic Yards	\$536	\$120 for 1st 100 cubic yards, plus \$20 for additional 100 cubic yards	121
	1,001-10,000 Cubic Yards	\$798	\$300 for 1st 1000 cubic yards, plus \$100 for additional 1,000 cubic yards or fraction thereof	122
	10,001-100,000 Cubic Yards	\$1,050	\$500 for 1st 10,000 cubic yards plus \$100 for additional 1,000 cubic yards or fraction thereof	123

			\$1,140 for 1st 100,000 cubic yards plus \$100 for additional 1,000 cubic yards or	
	100,001 Cubic Yards and up	\$1,302.00	fraction thereof	124
PUBLIC WORKS CIVIL				
Public Infrastructure Civil Public Works Permit			\$494 (plus an additional per hour rate if review exceeds 5 hours, as outlined in Note 1.)	125
	Engineering Plan Review Fee	\$315		126
	Engineering Permit Fee		3% of total cost of project	127
	Inspection Fee	\$210		128
	As-Built Review Fee			
	Engineering Alternative Methods Request (per item)	\$263		129
Civil Plan-Long Plat Projects			\$494 (plus an additional per hour rate if review exceeds 5 hours as outlined in Note 1)	130
	Engineering Plan Review Fee	\$1,439		131
	Engineering Permit Fee		3% of total cost of project	132
	Inspection Fee			
PLANNING/LAND USE				
Preliminary Plat <i>See Residential Land Development Below</i> All fee amounts are a deposit towards final bill.	Base Application Fee	\$2,100	\$2388 (Up to first 20 hours)	158
	per lot charge	\$100		159
	Public Works-Per Lot Charge	\$75	\$76	160
	Plat Alteration or Vacation	\$1,575	\$1,812 (Up to first 36 hours)	161
	Time Extension - 1 year	\$1,050		162
Final Plat	Base Application Fee	\$1,575	\$4,238 (Up to the first 36 hours)	163

	Engineering Review Per Lot Charge	\$100		164
	Engineering Final Review	\$300		165
Binding Site Plan			\$2,918 (Up to first 24 hours)	
	Base Application Fee	\$1,575		166
	Engineering Review-per lot charge	\$100		167
Preliminary Short Plat			\$1,944 (Up to first 16 hours)	
	Base Application Fee	\$788		168
	Per Lot Charge	\$100		169
	Engineering Review-per lot charge	\$75	\$76	170
Final Short Plat			\$1,944 (Up to first 16 hours)	
	Modified Short Plat	\$788		171
			\$1,04 (Up to first 8 hours)	
	Application Fee	\$788		172
	Engineering Final Review	\$300		173
Lot Line Adjustment			\$1,019 (Up to first 8 hours)	
	Residential application fee	\$315		174
	Engineering Final Review		\$152	175
Lot Line Elimination	Application Fee	\$263	\$442	177
	Engineering Final Review		\$152	178
Master Plan Development	Application Fee	\$26, 250		179
	Per Acre charge	\$100		180
Development Agreement	Application Fee	\$1,575		181
		Staff hours +		
	Staff Review Time	10%		182
Annexation			\$1,500 and Actual Staff Time	
	10% Notice of Intent	\$1,050		183
		\$5,000 deposit, actual staff time		
	60% Petition		\$2,918 (Up to first 24 hours)	184
Conditional Use	Application Fee	\$1,050		185
	Engineering Review		\$304	186
Administrative Conditional Use			\$1,459 (Up to first 12 hours)	
	Application Fee	\$263		187
Variance			\$1,944 (Up to first 16 hours)	
	Single Family Lot	\$525		188
			\$2,384 (Up to first 20 hours)	
	All Others	\$1,050		189
Administrative Variance			\$1,504 (Up to first 12 hours)	
	Application Fee	\$263		190
			\$1,064 (Up to first 8 hours)	
Accessory Dwelling Unit	Application Fee	\$263		191
Shoreline Exemption	Application Fee	\$105	\$487	192

Shoreline Substantial Development	Application Fee	\$1,050	\$2,824 (Up to first 24 hours)	193
Shoreline Variance Fee	Application Fee	\$1,050	\$2,824 (Up to first 24 hours)	194
Shoreline Conditional Use	Application Fee	\$1,050	\$2,824 (Up to first 24 hours)	196
Site Plan Review	Application Fee	\$788	\$2,824 (Up to first 24 hours)	197
	Engineering Review	\$300		198
Comprehensive Plan Amendment	Application Fee	\$2,100	\$2,734 (Up to first 24 hours)	199
Text Amendment, Title 16-19	Application Fee	\$2,100	\$2,734 (Up to first 24 hours)	200
Rezone	Application Fee	\$1,050	\$2,734 (Up to first 24 hours)	201
SEPA Checklist	with land use or permit application	\$420	\$597 (Up to first 5 hours)	202
	without permit application	\$525	\$707 (Up to first 6 hours)	203
	for each additional study	\$263	\$267	204

In the review of a land-use permit application, including but not limited to environmental (SEPA) review, the City may determine that such review requires the retention of professional consultant services. In addition to the above development fees that an applicant is required to submit, the applicant shall also be responsible for reimbursing the City for the cost of professional consultant services if the City determines that such services are necessary to complete its review of the application submittal. The City may also require the applicant to deposit an amount with the City which is estimated, at the discretion of the Community Development Director, to be sufficient to cover anticipated costs of retaining professional consultant services and ensure reimbursement to the City for such costs.

		Actual Cost +		
Environmental Impact Statement	Per consultant contract	10%	Contract +10%	206
			\$487 (Up to first 4	
Appeal of Administrative Decision	Application Fee	\$263	hours)	207
			\$487 (Up to first 4	
Appeal of SEPA Action	Application Fee	\$263	hours)	208
			\$487 (Up to first 4	
Appeal of Notice of Violation	Application Fee	\$263	hours)	209
			\$532 (Up to first 4	
Temporary Use Permit	Application Fee	\$105	hours)	210
Transfer Development Rights	Application Fee	\$525		211
	per development credit	\$50		212
Treasured Place Status		\$263		213
Reasonable Use Exception	Application Fee	\$263	\$487	217
			\$1,147 (Up to first	
Sensitive Areas Permit	Application Fee	\$525	10 hours)	218
Sensitive Area Utility Exception	Application Fee	\$1,050		219
			\$487 (Up to first 4	
Formal Code Interpretation	Application Fee	\$158	hours)	220
Pre-Application Meeting	1 hour meeting/review	No Charge	\$267	221
	Additional Meetings	\$210	Staff time + 10%	222
			\$880 (Up to first 8	
Hearing Examiner	Hearing Fee	\$788	hours)	223
		Hourly rate +		
	Plus Examiner Costs	10%		224
		3rd Party		
Public Notice Boards	Per BDMC 18.08	Vendor Charge		225

BDMC 2.62.012 may require the posting of a deposit and payment of actual city costs for certain permits. 226

Deposits that are listed on the General Fee Schedule are required to be paid in addition to the Permit Fees. The Deposit is used to cover staff costs, engineering, and/or other professional consultant costs plus 10%. Deposits will be tracked on a monthly basis. If the cost exceeds the deposit, an additional deposit invoice will be sent in writing. If the additional deposit is not paid within 30 days, the city may discontinue review or work on the project or deem the project incomplete. 227

At the end of the project, the city will invoice any final costs over the deposits, or refund any remaining balance to the person who made the deposit. Final invoices are due within 30 days.

228

Late Fee (If not paid within 30 days of invoicing)

\$25 229

BUILDING PERMIT FEES
General

Total Project Valuation

231

\$1.00 to \$500

\$26 \$35 232

\$26 for the first \$500, plus \$3.35 for each additional \$100, or fraction thereof, to and including \$2,000. \$35 for first \$500, plus \$7 for each additional \$100 or fraction thereof up to and including \$2,000.

\$501 to \$2,000

233

\$76.20 for the first \$2,000 plus \$15.40 for each additional \$1,000 or fraction thereof, to and including \$25,000. \$140 for first \$2,000 plus \$17 per each additional \$1,000 or fraction thereof up to and including \$25,000.

\$2,001 to \$25,000

234

\$430.40 for the first \$25,000 plus \$11.10 for each additional \$1,000 or fraction thereof, to and including \$50,000. \$531 for first \$25,000 plus \$14 per each additional \$1,000 or fraction thereof up to and including \$50,000.

\$25,001 to \$50,000

235

\$50,001 to \$100,000	\$708.20 for the first \$50,000 plus \$7.70 for each additional \$1,000 or fraction thereof, to and including \$100,000. \$881 for first \$50,000 plus \$13 per each additional \$1,000 or fraction thereof, up to and including \$100,000	236
\$100,001 to \$500,000	\$1093.20 for the first \$100,000, plus \$6.15 for each additional \$1,000 or fraction thereof, to and including \$500,000. \$1,531 for first \$100,000 plus \$13 per each additional \$1,000 or fraction thereof, up to and including \$500,000	237
\$500,001 to \$1,000,000	\$3556.30 for the first \$500,000 plus \$5.25 for each additional \$1,000 or fraction thereof, to and including \$1,000,000. \$6,731 for first \$500,000 plus \$9 per each additional \$1,000 or fraction thereof, up to and including \$1,000,000.	238
\$1,000,000 and Up	\$6,169.65 for the first \$1,000,000, plus \$4.05 for each additional \$1,000 or fraction thereof. \$11,231 for the first \$1,000,000 plus \$9 per each additional \$1,000 or fraction thereof.	239
Other Inspections and Fees	\$100 \$200 deposit, actual staff	240
Change of Use w/o a TI Re-Roof permit Residential	Permit fee and deposit Permit fee	hours \$105 \$138 241

		Based on valuation, see Building Permit section	
Re-Roof permit Commercial/MF	Permit fee and plan check	\$100 deposit and actual	242
Miscellaneous Permit	Permit fee	horus	243
Investigation Fee- work w/o a permit	Permit fee	Double required permit fees	244
Temporary Certificate of Occupancy	Per 30 day TCO	\$263	245
Permit Extension	180 day extension	\$50	246
Application Extension	90 day extension	\$50	247
Consultant/Peer Review	Consultant fees	per contract + 10%	248
Coal Mine Hazard Report Review		\$100	249
		\$86 for One Hour, Minimum Charge Two Hours	
1. Inspections outside of normal business hours		\$86 per assessment	\$172 250
2. Re-Inspection fees			\$86 251
3. Inspections for which no fee is specifically indicated		\$75 per hour, Minimum charge one hour	\$86 per hour, minimum charge, one hour 252
4. Additional plan review due to additions or revisions to plans		\$84/hour Minimum charge one hour	\$86 per hour, minimum charge, one hour 253
5. Additional plan review due to Deferred Submittals		\$84 per hour Minimum charge one hour	\$86 per hour, minimum charge, one hour 254
6. For use outside consultants for plan checking and inspections or both		Actual cost + 10%	255
7. Plan review shall be 65% of the permit fee when required		65% of Permit Fee	256

Public Improvement Project Fee Waiver. The Mayor or designee, may at his/her discretion, waive any or all of the permit fees required under the International Building Code and any amendments thereto, for any public improvement project for which the city is providing some or all of the funding for said project.

No Charge 257

Or the total hourly cost to the jurisdiction, whichever is the greatest. This cost shall include supervision, overhead, equipment, hourly wage and fringe benefits of the employees involved.

Is this part of the project fee waiver?

????? 258

Building Plan Check Fee Based on project valuation 65% of permit fee, see above 259

Engineering Design and Construction Standards/Guidelines \$50 260

Each Section \$10 261

MECHANICAL PERMIT

Permit Issuance and Heaters 263

1. For issuing a mechanical permit associated with a building permit \$40 \$50 264

2. For issuing a mechanical permit not associated with a current building permit \$100 \$138 265

3. Technology Fee-PLM/MEC Unit Fee Schedule (Note: the following do not include permit issuing fee) \$5 \$40 266

1. Furnaces 267

For the installation or relocation of forced-air or gravity-type furnace or burner, including ducts and vents attached to such appliance up to and including 100,000 btu/h (29.3kW) \$18 \$20 268

For the installation or relocation of forced-air or gravity-type furnace or burner, including ducts and vents attached to such appliance up to and including 100,000 btu/h (29.3kW) \$18 \$20 269

For the installation or relocation of forced-air or gravity-type furnace or burner, including ducts and vents attached to such appliance over 100,000 Btu/h (29.3kW)	\$22	\$23	270
For the installation or relocation of each suspended heater, recessed wall heater or floor mounted unit heater	\$8	\$26	271 272
2. Appliance Vents			
For the installation, relocation or replacement of each appliance vent installed and not included in an appliance permit	\$9	\$23	273
3. Repairs or Additions			274
For the repair of, the alternation of, or addition to each heating appliance, refrigeration unit, cooling unit, absorption unit, or each heating, cooling, absorption or evaprative cooling system, including installation of controls regulated by the Mechanical Code	\$17		275
4. Boilers, Compressors and Absorption Systems			276
For the installation or relocation of each boiler or compressor to and including 3 horsepower (10.6kW) or each absorption system to and including 1,000,000 BTU/h	\$18	\$22	277
For the installation or relocation of each boiler or compressor over 3 horsepower (10.6kW) to and including 15 horsepower (52.7kW) or each absorption system over 500,000 btu/h (293.1kW) to and including 1,000,000 btu/h (293.1kW).	\$45	\$36	278

For the installation or relocation of each boiler or compressor over 30 horsepower (105kW) to and including 50 horsepower (176kW) or each absorption system over 1,000,000btu/h (293.1kW) to and including 1,750,000 btu/h (512.9kW).	\$67	\$73	279
For the installation or relocation of each boiler or compressor over 50 horsepower (176kW), or each absorption system over 1,750,000 btu/h (512.9kW)	\$112	\$120	280
5. Air Handlers			281
For each air handling unit to and including 10,000 cubic feet per minute (cfm) (4719 L/s), including ducts attached thereto (Note: This fee does not apply to an air-handling unit which is a portion of a factory-assembled appliance cooling system, evaporative cooler or absorption unit for which a permit is required elsewhere in the Mechanical Code.	\$14	\$15	282
For each air-handling unit over 10,000 cfm (4719 L/s)	\$22	\$26	283
6. Evaporative Cooler			284
For each evaporative cooler other than a portable type.	\$14	\$15	285
7. Ventilation and Exhaust			286
For each ventilation fan connected to a single duct	\$9	\$12	287
For each ventilation system which is not a portion of any heating or air-conditioning system authorized by a permit	\$14	\$15	288
For the installation of each hood which is served by a mechanical exhaust, including the ducts for each hood.	\$14	\$15	289
8. Incinerators			290
For the installation or relocation of each domestic-type incinerator	\$18	\$26	291

For the installation or relocation of each commercial or industrial type incinerator		\$18	\$22	292
9. Gas Piping				293
Gas piping systems 1-5 outlets		\$17	\$10	294
For each additional gas outlet over 5		\$3	\$6	295
Hazardous process piping system (HPP)				296
	1-4 outlets		\$10	297
	each outlet over 5		\$6	298
10. Miscellaneous				299
Commercial Mechanical Permit Plan Review			65% of mechanical permit fee	300
For each appliance or piece of equipment regulated by the Mechanical Code but not classed in other appliance categories or for which no other fee is listed in the table.		\$14		301
Technology Fee	per application	\$25	\$40	302
	per \$10,000 in project value (graduated)	\$2	\$2	303
The technology fee is assessed for each of the following transactions: building permits, fire permit, sign permit, demolition permit, right-of-way use permit and most land use permits. A technology fee will be assessed at land use application submittal.				304
Other Inspections and Fees				305
1. Inspections outside of normal business hours, per hour (minimum charge 2 hours)		\$125	\$240	306
2. Inspections for which no fee is specifically indicated, per hour (minimum charge one-half hour)		\$93	\$120	307
3. Revisions to plans or to plans for which an initial review has been completed (minimum charge one-half hour)		\$93	\$60	308
PLUMBING PERMIT				309
Permit Issuance				310

1. For issuing a plumbing permit associated with a building permit	\$40	\$38	311
2. For issuing a plumbing permit not associated with a current building permit	\$100		312
3. For issuing each supplemental permit	\$12	\$15	313
4. Technology Fee - PLM/MEC	\$5	\$40	314
Unit Fee Schedule (Note the following do not include permit-issuing fee)			316
1. For each additional plumbing fixture on one trap or a set of fixtures on one trap (including water, drainage piping and back flow protection thereof.	\$9	\$12	317
2. For each building sewer and each trailer park sewer	\$19	\$23	318
3. Rainwater systems - per drain (inside building)	\$9	\$12	319
4. For each water heater and/or vent	\$9		320
5. For each industrial waste pretreatment interceptor including its trap and vent except kitchen-type grease interceptors functioning as fixture traps.	\$9	\$12	321
6. For each installation, alteration or repair or water piping and/or water treatment, each	\$9	\$12	322
7. For each repair or alteration of a drainage or vent piping, each fixture	\$9	\$12	323
8. For each lawn sprinkler system on any one meter including back flow protection devices thereof.	\$9	\$12	324
9. For atmospheric-type vacuum breakers not included in item 12:			325
1 to 5	\$7	\$10	326
over 5, each	\$2	\$6	327
10. For each backflow protective device other than atmospheric type vacuum breakers:			328

2 inch (51mm) diameter and smaller		\$19	\$12	329
over 2 inch (51mm) diameter		\$49	\$23	330
11. For initial installation and testing for a reclaimed water system		\$36	\$40	331
12. For each annual cross-connection testing of a reclaimed water system (excluding initial test)		\$36	\$40	332
13. For each medical gas piping system service one to five inlet(s) for a specific gas		\$61	\$68	333
14. For each additional medical gas inlet(s)/outlet(s)		\$7	\$10	334
OTHER				335
1. Inspections outside of normal business hours		\$125	\$200	336
2. Re-inspection fee		\$93	\$138	337
3. Inspections for which no fee is specifically indicated		\$93	\$138	338
4. Additional plan review required by changes, additions or revisions to approved plans (minimum charge one-half hour)		\$93		339
		\$120 permit,		
Demo-SFR out building etc	Permit fee and deposit	\$1000 deposit		340
Relocation Permit		\$210	\$250	341
Mobile Home Title Elimination	Permit fee	\$105	\$138	342
Driveway (stand alone)	expansion and new Permit fee (should be at line 441?)	\$210	\$250	343
Re-roof permit-Residential Fuel/Oil Tank		\$105	\$138	344
Decommission/Remove	Base permit fee	\$105		356
	Plan review and inspection fee	per contract +10%		357
Residential LPG Tanks	Base Permit Fee	\$126		358
	Tank Under 125 gal.	\$46		359
	126-500 gal.	\$74		360
	501 and up, additional	\$100		361
	Each 500 gal additional	\$126		362
FIRE PERMIT				345
Commercial Building Permit	Plan review and inspection fee		per contract +10%	346
Multi-family Building Permit	Plan review and inspection fee		per contract +10%	347

Single-family Building Permit	Plan review and inspection fee		per contract +10%	348
Annual Code Enforcement Inspection			per contract +10%	349
Final and correction inspections			per contract +10%	350
Fire Permit	Base fee	\$105		351
Fire Sprinkler/Alarm Sys. Rev	Plan review and inspection fee		per contract + 10%	352
PUBLIC WORKS				
Water Connection				
Capital Facilities Connection Per	Single Family Only	\$5,976		38
		Per BDMC		
	Others	13.04.295		39
Water Investigation Needs Report	Residential (Not required for lots within approved city subdivisions and short plats)	\$105		109
	Multi-Family, Commercial, Industrial, Public	\$210		110
	Note: Some applications will require the use of outside consultants. See BDMC		Actual cost +	
Hydraulic Model for Water System	2.60.050		10%	111
	Deposit		\$500	112
			Actual cost +	
Water Equipment and Parts			10%	113
SEWER				
			Per BDMC	
Sewer Connection Fee	Single Family Only	13.04.295		41
Sewer Investigation Certificates	Residential	\$105		42
	Multi-Family, Commercial, Industrial, Public	\$210		43
Side Sewer Review/Inspection		\$110		44
Engineered Hydraulic Flows to Sewer System	Deposit	\$1,000		45
STORMWATER				
Stormwater Drainage	Plan Review-per single family lot	\$110	\$138	56
	Inspection per single family lot	\$110	\$138	57
OTHER				
Public Works Final Inspection--				
Building Permit		\$110	\$138	58
Deviation of Public Works Standards	Application Fee	\$300		59

	Note: Some applications will require the use of outside consultants. See BDMC		
Traffic Engr. Review Fees	2.60.050	Actual Cost + 10%	60
	Deposit	\$1,000	61
Review of Resubmitted/Reinspection	Per Occurrence	\$110	\$138 62
Inspections Outside Business Hours		\$142.50	\$176 63
Annual Inspections Hourly Rate (Cross Connection Control, Storm Systems, Grease Interceptor)	Per Occurrence	\$110	\$138 64
Reinspection Fee	Per Occurrence	\$110	\$138 66
Equipment Fee w/o Operator	City Dump Truck	\$75/hour	67
	City Vehicle	\$50/hour	68
	City Backhoe	\$75/hour	69
	Miscellaneous Small Utility Equipment	\$25/hour	\$30 70
	Shoulder Mower	\$75/hour	71
	Riding Mower	\$30/hour	72
	Parts	Cost + 10%	\$35???? 73

FIRE IMPACT FEES

?????

ENGINEERING REVIEW

Right of Way Permit-includes 2 inspections and 1/2 hour City review	Up to 300 lineal feet	\$452	480
	Over 300 lineal feet	\$713	481
	Plus \$2 per foot over 300 lineal feet		482
Right of Way Permit Extension			483
	Up to 300 lineal feet	\$452	484
	Over 300 lineal feet	\$713	485
	Plus \$2 per foot over 300 lineal feet		486
	Parade, Block Party, Oversize Load	\$141	487
Right-of-Way Use-Non-Construction Right of Way construction permit (franchised utility)	Up to 300 lineal feet	\$452	488
	Over 300 lineal feet	\$713	489
	Plus \$2 per foot over 300 lineal feet		490
Right of Way Use placement permit (non franchised utility)	Up to 300 lineal feet	\$452	491
	Over 300 lineal feet	\$713	492

	Plus \$2 per foot over 300 lineal feet		493
Right of Way use permit-aerial work			494
	Base fee (non contractor)	\$141	495
	Per pole	\$141	496
Right of way use permit-aerial work and pole replacement			
	Base fee (contractor)	\$452	497
	Per pole fee	\$282	498
Failure to call in job start		\$141	499
Petition for vacation of right of way		\$1,017	500
Plus pass through consultant fees	\$110	Cost + 10%	501
Right of Way extra inspection, 1 hour minimum,	Per hour	\$276	502
Request for Extension of Concurrency and Traffic Report Approval		Actual cost	504
Request for individually-determined transportation impact fee		\$138	505
Technology Fees Plumbing and Mechanical		\$40	507
Engineering Review		????	509
Engineering Design Review		????	511
Design and Construction Standards design deviation		????	512
Design and Construction Standards design variance		????	513
Drainage Review Fees		\$1,652	514
Drainage plan review		\$3,303	515
Storm water Manual design deviations		\$8,254	516
Storm water Manual design variance		\$12,378	517
Construction Inspection and Latecomer's Agreements		\$3,655	519

From: Carol Morris [mailto:carol_a_morris@msn.com]
Sent: Thursday, January 29, 2015 6:06 PM
To: Carol Benson; Aaron Nix; Andy Williamson; Brenda Martinez
Subject: Repealing Black Diamond's code on vesting

Hi: The City of Black Diamond adopted code provisions on the subject of vested rights that are some of the broadest and most favorable to developers that I have ever seen in any codes. In fact, I can't remember seeing any code with language like this.

In Section 18.14.030, it states that "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." The definition of "project permit application" includes practically every type of permit, as you can see from Section 18.14.010.

There are two reasons that I am asking you to consider repealing this section now, even though it will only apply to new permits. There is a new case that came down from the Court of Appeals, (*Potala Village Kirkland LLC v. City of Kirkland*) which is very favorable to cities, and severely limits the application of the vested rights doctrine to only a few permits (like building permits). You could continue with your current vested rights code language if you wanted, but this case shows that you can take a much narrower view, if you like.

The other reason is that the Pollution Control Hearings Board has issued a decision in a case involving Pierce, Snohomish, Clark and King County, Seattle, Tacoma, WSDOT and DOE (PCHB No. 12-093c and 12-097c) which basically can be summarized as saying that stormwater regulations are not land use control ordinances subject to the vested rights doctrine and should not be subject to the doctrine because such an interpretation could hinder a City's ability to comply with its NPDES permit. This decision is on appeal and everyone is waiting for the decision from the courts -- but the *Potala* case may be an early indication of where things are going.

I will send you a copy of the *Potala* case and if you want the Pollution Control Board's decision, let me know. I would like to talk about this with you because it involves a substantial change to your code. Thanks.

Carol Morris, Morris Law, P.C.
3304 Rosedale Street N.W., Suite 200
Gig Harbor, WA 98335
(253) 851-5090
F: (360) 850-1099
carol@carolmorrislaw.com
Website: carolmorrislaw.com

183 Wash.App. 191
Court of Appeals of Washington,
Division 1.

POTALA VILLAGE KIRKLAND, LLC, a
Washington limited liability company, and
Lobsang Dargey and Tamara Agassi Dargey, a
married couple, Respondents,

v.

CITY OF KIRKLAND, a Washington municipal
corporation, Appellant.

No. 70542-3-I. | Aug. 25, 2014.

Synopsis

Background: Property developers filed action against city seeking writ of mandamus directing city to accept and process building permit application for proposed project. The Superior Court, King County, [Monica Benton](#), J., granted summary judgment in favor of developers and issued writ. City appealed.

[Holding:] The Court of Appeals, [Cox](#), J., held that developers' filing of application for shoreline substantial development permit did not vest rights to zoning ordinances for entire project that existed on date of application.

Reversed and remanded with directions.

West Headnotes (5)

- ^[1] **Zoning and Planning**
🔑 Change of regulations as affecting right

“Vested rights doctrine,” under which, upon the filing of a valid and fully complete building permit application, the zoning or other land use control ordinances in effect on the date of the application control, strongly protects the right to develop property. [West’s RCWA 19.27.095\(1\)](#).

[Cases that cite this headnote](#)

- ^[2] **Zoning and Planning**
🔑 Change of regulations as affecting right

Under the date certain standard used in the vested rights doctrine, developers are entitled to have a land development proposal processed under the regulations in effect at the time a complete building permit application is filed, regardless of subsequent changes in zoning or other land use regulations. [West’s RCWA 19.27.095\(1\)](#).

[Cases that cite this headnote](#)

- ^[3] **Constitutional Law**
🔑 Particular issues and applications
Zoning and Planning
🔑 Change of regulations as affecting right

A date certain standard, as used in the vested rights doctrine, which provides that the zoning or other land use control ordinances in effect on the date the developer’s complete building permit application is filed, ensures that new land-use ordinances do not unduly oppress development rights, thereby denying a property owner’s right to due process under the law. [U.S.C.A. Const.Amend. 14](#); [West’s RCWA 19.27.095\(1\)](#).

[Cases that cite this headnote](#)

- ^[4] **Zoning and Planning**
🔑 Change of regulations as affecting right

Developers’ filing of completed application for shoreline substantial development permit for portion of project prior to city’s moratorium on certain building permits did not vest rights to zoning or other land use control ordinances for entire project that existed on date of filing, absent filing of completed building permit

application; statute governing vested rights doctrine only referred to building permits and did not include shoreline substantial development permits, and no law prevented developer from filing building permit application prior to moratorium. [West's RCWA 19.27.095\(1\)](#).

[Cases that cite this headnote](#)

[5]

Zoning and Planning

 [Change of regulations as affecting right](#)

Filing of an application for the shoreline substantial development permit, without filing an application for a building permit, does not vest rights to zoning or other land use control ordinances. [West's RCWA 19.27.095\(1\)](#).

[Cases that cite this headnote](#)

Attorneys and Law Firms

****1144** [Stephanie Ellen Croll](#), Keating Bucklin & McCormack Inc. PS, Seattle, WA, [Robin Jenkinson](#), City Attorney, Kirkland, WA, for Appellant.

[Duana Theresa Kolouskova](#), Johns Monroe Mitsunga Kolouskova PLLC, Bellevue, WA, for Respondent.

Roger D. Wynne, Seattle City Attorney's Office, Seattle, WA, Amicus Curiae on behalf of Wa State Association of Municipal Attorneys.

[Tim Trohimovich](#), Futurewise, [Jeffrey M. Eustis](#), Aramburu & Eustis LLP, Seattle, WA, Amicus Curiae on behalf of Futurewise.

Opinion

[COX, J.](#)

***194** ¶ 1 Washington's vested rights doctrine originated at common law but is now statutory.¹ Under [RCW 19.27.095\(1\)](#), vesting occurs on the filing of a "valid and fully complete building permit application." In such an

event, the "zoning or other land use control ordinances in effect on the date of the application" shall control.²

¶ 2 Here, Lobsang Dargey, Tamara Agassi Dargey, and Potala Village Kirkland, LLC (collectively "Potala Village") sought to develop certain real property in the City of Kirkland. Potala Village filed a complete application for a shoreline substantial development permit on February 23, 2011. But it did not file an application for a building permit before the City imposed a moratorium on the issuance of certain permits. The filing of the application for the shoreline substantial development permit is not a building permit application. Thus, it did not vest on February 23, 2011 rights to then-existing zoning or other land use control ordinances. We reverse the grant of summary judgment to Potala Village and remand with directions to grant summary judgment to the City.

¶ 3 The material facts are undisputed, as all parties expressly acknowledge in their appellate briefing.³

¶ 4 Potala Village sought to construct a large mixed-use project in the Neighborhood Business ("BN") Zone of the City. The project is to include residential, retail, and commercial space.

¶ 5 Potala Village had two meetings with the City in 2009 and 2010. These meetings resulted in a determination that multiple permits for the project would be required. Because a small portion of the project is to be located within an area subject to state and local shoreline laws, Potala Village was ***195** required to file an application with the City for a shoreline substantial development permit.

¶ 6 On February 23, 2011, Potala Village filed an application for a shoreline substantial development permit for the portion of the proposed development within the shoreline area.⁴ It did not file an application for a building permit for the entire proposed development, although no law prohibited it from doing so. On May 11, 2011, the City issued a letter of completeness for the shoreline substantial development permit application.

¶ 7 An organized group of neighbors publicly voiced objections to the proposed development. The group particularly objected to the proposed residential density for Potala ****1145** Village. It appears that surrounding residential properties are zoned for a maximum density of 12 units per acre.

¶ 8 On November 15, 2011, the City enacted an ordinance imposing an emergency development moratorium on the

BN zone. The moratorium temporarily precluded the issuance of permits in the BN zone. As of the date of the moratorium, Potala Village still had not filed an application for a building permit.

¶ 9 On May 1, 2012, the City Council extended the moratorium for six months. Shortly thereafter, Potala Village commenced this action against the City, alleging multiple causes of action and seeking declaratory and other relief.

¶ 10 Potala Village attempted to file a building permit application on October 16, 2012. The City declined to accept it because of the existing moratorium. Later that same day, the City extended the moratorium for the final time.

¶ 11 On December 11, 2012, the City Council amended the city zoning code in a number of ways. For purposes of this action, the code changes to the BN zone placed a limit on residential density of 48 units per acre. As amended, the *196 code limits Potala Village's project to 60 units instead of the 143 units that it sought to construct.

¶ 12 The City approved Potala Village's shoreline substantial development permit application on January 17, 2013.

¶ 13 All parties to this litigation moved for summary judgment. The City argued that Potala Village's failure to file a completed building permit application before the building permit moratorium of November 15, 2011 precluded vesting of rights to zoning or other land use control ordinances in effect prior to that date. It argued that the filing of the shoreline substantial development permit application on February 23, 2011 did not vest such rights.

¶ 14 Potala Village disagreed. It took the position that the filing of its completed shoreline substantial development permit application on February 23, 2011 for a portion of the project was sufficient to vest rights to the zoning or other land use control ordinances in effect on that date for the entire project. It sought a writ of mandamus directing the City to accept and process a building permit application for the project.

¶ 15 The trial court granted summary judgment to Potala Village and issued a writ of mandamus. The court denied the City's motion for reconsideration.

¶ 16 The City appeals.

VESTED RIGHTS DOCTRINE

¶ 17 The City argues that Potala Village did not file an application for a building permit and, thus, it had no right to vest to the zoning or other land use control ordinances that existed at the time it filed its shoreline substantial development permit application on February 23, 2011. We agree.

*197 ¶ 18 This court reviews the grant of summary judgment de novo.⁵ Summary judgment is appropriate only where there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law.⁶ This case presents a question of law, which this court reviews de novo.⁷

Background

[1] [2] ¶ 19 The vested rights doctrine "originated at common law."⁸ "Washington's vested rights doctrine strongly protects the right to develop property."⁹ This doctrine uses a "date certain" standard.¹⁰ "Under the date certain standard, developers are entitled 'to have a land development proposal processed under the regulations in effect at the time a complete building permit application is filed, regardless of subsequent **1146 changes in zoning or other land use regulations.'"¹¹

[3] ¶ 20 A date certain standard "ensures that 'new land-use ordinances do not unduly oppress development rights, thereby denying a property owner's right to due process under the law.'"¹² This is the minority approach within the United States, and " 'it offers [greater] protection of [developers' *198] rights than the rule generally applied in other jurisdictions.'"¹³

¶ 21 In the 1950s, the supreme court first adopted the common law vested rights doctrine. In *Ogden v. City of Bellevue*¹⁴ and *Hull v. Hunt*,¹⁵ the supreme court explained that the right to construct in accordance with the "zoning ordinances and building codes in force at the time of application for the permit" vests when a party applies for a "*building permit*."¹⁶

¶ 22 In cases that followed, Washington courts applied the vested rights doctrine to permit applications other than building permit applications.¹⁷ They included conditional use permit applications,¹⁸ grading permit applications,¹⁹ shoreline substantial development permit applications,²⁰

and septic permit applications.²¹

¶ 23 In 1987, the legislature enacted legislation regarding the vested rights doctrine. The session laws added two new sections to chapter 19.27 RCW and chapter 58.17 RCW, which were later codified at [RCW 19.27.095\(1\)](#) and [*199 RCW 58.17.033\(1\)](#) respectively.²² The session laws provide in relevant part as follows:

NEW SECTION. Sec. 1. A new section is added to chapter 19.27 RCW to read as follows:

(1) A valid and fully complete *building permit application* for a structure, that is permitted under the zoning or other land use control ordinances in effect on the date of the application shall be considered under the building permit ordinance in effect at the time of application, and the zoning or other land use control ordinances in effect on the date of application.

...

NEW SECTION. Sec. 2. A new section is added to chapter 58.17 RCW to read as follows:

(1) A proposed division of land, as defined in [RCW 58.17.020](#), shall be considered under the subdivision or short subdivision ordinance, and zoning or other land use control ordinances, in effect on the land at the time a fully completed *application for preliminary plat approval of the subdivision, or short plat approval of the short subdivision*, has been submitted to the appropriate county, city, or town official.²³

****1147** As shown by the emphasized language, these statutory sections only refer to building permit applications and subdivision applications.²⁴

¶ 24 In 1994, the supreme court considered whether the vested rights doctrine applied to master use permit (MUP) applications.²⁵ In *Erickson & Associates, Inc. v. McLerran*, a developer filed a completed MUP application.²⁶ After the application filing, a city ordinance became effective, which adversely impacted the proposed project that was the ***200** subject of the application.²⁷ The developer argued that the vested rights doctrine applied to the MUP application.²⁸ The supreme court disagreed, holding that the doctrine did not apply to the filing of MUP applications.²⁹

¶ 25 In its analysis, the court referred to the 1987 legislation that codified the common law doctrine, at least to the extent specified in the statutes.³⁰ The developer argued that the doctrine was not limited to building permit

applications.³¹ In support, the developer cited a 1974 case from this court, *Talbot v. Gray*, which applied the doctrine to a shoreline permit.³² The developer also cited other case authority applying the doctrine to other types of permit applications.³³ Notably, all of the cited cases preceded the 1987 legislation codifying the doctrine to the extent specified in the statutes.³⁴

¶ 26 The supreme court agreed with the developer in *Erickson* that prior cases applied the doctrine in other contexts besides building permits.³⁵ But it concluded that the vested rights doctrine was not a “blanket rule” requiring municipalities to process all permit applications according to the rules in place at the outset.³⁶ Rather, this doctrine was designed to place limits on the municipalities’ ***201** discretion to allow developers to plan with “‘reasonable certainty.’”³⁷

¶ 27 Years later, in *Abbey Road Group, LLC v. City of Bonney Lake*, the supreme court further developed what it said in *Erickson* concerning the effect of the 1987 legislation.³⁸ There, the issue was whether the filing of a site plan without also filing a building permit application vested Abbey Road’s development rights.³⁹ The supreme court affirmed the court of appeals’ decision, which held that filing a building permit application was necessary.⁴⁰

¶ 28 In reaching that result, the supreme court stated that *Erickson* largely controlled its decision.⁴¹ The court confirmed that in the absence of a local vesting ordinance specifying an earlier vesting date, “[RCW 19.27.095\(1\)](#) is the applicable vesting rule.”⁴² Noting Abbey Road’s failure to address this statute, the court rejected the request to overrule its decision in *Erickson*.⁴³ And the court expressly rejected the invitation to extend ****1148** the vested rights doctrine to other situations, stating in a footnote:

Abbey Road also argues that we should expand the vested rights doctrine based on case law, contending that there is no “rational reason” for refusing to expand the doctrine to site plan applications when the courts have done so in other contexts.... See *Juanita Bay Valley Cmty. Ass’n v. City of Kirkland*, 9 Wash.App. 59, 510 P.2d 1140 (1973) (grading permit applications); *Talbot v. Gray*, 11 Wash.App. 807, 525 P.2d 801 (1974) (shoreline permit applications); ***202** *Ford v. Bellingham–Whatcom County Dist. Bd. of Health*, 16 Wash.App. 709, 558 P.2d 821 (1977) (septic tank permit application); *Beach v. Bd. of Adjustment*, 73 Wash.2d 343, 438 P.2d 617 (1968) (conditional use permit applications); *Weyerhaeuser v. Pierce County*, 95 Wash.App. 883, 976 P.2d 1279 (1999) (conditional use permit applications). *Again, in Erickson, we*

*considered and rejected similar arguments, and we are not persuaded to overrule our analysis or holding in Erickson.*⁴⁴

¶ 29 The court then stated that it could not ignore the legislative directive set forth in RCW 19.27.095(1).⁴⁵ And it also said that this 1987 statute and the analysis in *Erickson* superseded a prior case to the contrary.⁴⁶

¶ 30 Importantly, the *Abbey Road* court stated that the legislature, not the judiciary, is best suited to reform the vested rights doctrine:

Abbey Road urges this court to establish a uniform vesting point “for every land use permit application regardless of the permit’s name or what it does or does not do.” *We find that such a rule would eviscerate the balance struck in the vesting statute.* While some of Abbey Road’s arguments could support a change in the law, *instituting such broad reforms in land use law is a job better suited to the legislature.*⁴⁷

¶ 31 Most recently, in *Town of Woodway v. Snohomish County*, the supreme court reiterated that “[w]hile it originated at common law, *the vested rights doctrine is now statutory.*”⁴⁸ This statement is fully consistent with the case law and statutes that we have discussed in tracing the development of the vested rights doctrine.

***203 Application**

^[4] ¶ 32 Here, the issue is whether, in the absence of filing a building permit application, the vested rights doctrine applies to vest rights to zoning or land use control ordinances for the project that existed at the time Potala Village filed its shoreline substantial development permit application on February 23, 2011. The validity of the moratorium on the issuance of permits that the City imposed before Potala Village attempted to file its building permit application is not at issue in this appeal.

¶ 33 To resolve the issue on appeal, we are guided by the supreme court’s decisions in *Erickson* and *Abbey Road* and its most recent statement in *Town of Woodway*: “While it originated at common law, the vested rights doctrine is now statutory.”⁴⁹

^[5] ¶ 34 With these points in mind, we hold that the filing of the application for the shoreline substantial development permit, without filing an application for a building permit, did not vest rights to zoning or other land use control ordinances.

¶ 35 We turn first to RCW 19.27.095(1), which states:

****1149** A valid and fully complete *building permit application* for a structure, that is permitted under the zoning or other land use control ordinances in effect on the date of the application shall be considered under the building permit ordinance in effect at the time of application, and the zoning or other land use control ordinances in effect on the date of application.⁵⁰

As previously noted, the plain words of this statute include “building permits” but do not include shoreline substantial development permits. We must presume that the legislature *204 was aware of the then-existing common law regarding the vested rights doctrine when it passed this legislation.⁵¹ Yet the legislature only codified the vested rights doctrine to the extent of building permits in this section of the session laws.⁵² Thus, we further conclude from the exclusion of shoreline substantial development permits that the legislature intended that the vested rights doctrine would not extend to such permits.⁵³

¶ 36 The Final Bill Report for enactment of this legislation in 1987 reinforces our conclusion. It states as follows:

FINAL BILL REPORT

SSB 5519

...

SYNOPSIS AS ENACTED

BACKGROUND:

Washington State has adhered to the current vested rights doctrine since the Supreme Court case on *State ex rel. Ogden v. Bellevue*, 45 Wash.2d 492 [275 P.2d 899] (1954). The doctrine provides that a party filing a timely and sufficiently complete building permit application obtains a vested right to have that application processed according to zoning, land use and building ordinances in effect at the time of the application. The doctrine is applicable if the permit application is sufficiently complete, complies with existing zoning ordinances and building codes, and is filed during the period the zoning ordinances under which the developer seeks to develop are in effect. If a developer complies with these requirements, a project cannot be *205 obstructed by enacting new zoning ordinances or building codes. *West Main Associates v. Bellevue*, 106 Wash.2d 47 [720 P.2d 782] (1986).

...

SUMMARY: The vested rights doctrine established by case law is made statutory, with the additional requirement that a permit application be fully completed for the doctrine to apply. The vesting of rights doctrine is extended to applications for preliminary or short plat approval. The requirements for a fully completed building permit application or preliminary on short plat application shall be defined by local ordinance.⁵⁴

¶ 37 The background statement shows that the legislature was aware of the common law origins of this doctrine, citing *Ogden*. Notably, that was a case that applied the doctrine to a building permit.⁵⁵ Thus, the legislature chose to codify the vested rights doctrine, but only to the extent of building permits, as the plain language of the statute specifies.

¶ 38 We also note that the legislature also chose to extend the vested rights doctrine to completed applications for preliminary plat approval of subdivisions or short plat approval for short subdivisions at the same time it codified the doctrine to the extent of building permits. We conclude from this that the legislature considered a wider scope of permit **1150 types to which the doctrine might apply beyond building permits. Yet, the legislature chose not to include applications for shoreline substantial development permits within its 1987 codification of the vested rights doctrine. Because these statutes are essentially the same now as when first enacted, we conclude the extent of codification of the vested rights doctrine remains the same.

¶ 39 Potala Village ignores RCW 19.27.095(1). It also fails to persuasively address *Town of Woodway*, *Abbey Road*, and *206 *Erickson*, all of which trace the supreme court's evolving views on whether and to what extent the vested rights doctrine applies.

¶ 40 The trial court granted Potala Village's motion for summary judgment and issued a writ of mandamus directing the City to accept and process Potala Village's building permit application.⁵⁶ In doing so, the trial court cited in its order this court's 2013 decision that preceded the supreme court's decision in *Town of Woodway*.⁵⁷ We view this citation as likely a reference to language in this court's opinion that cited *Talbot* in the discussion of the development of the vested rights doctrine over time.⁵⁸ Accordingly, we turn to this court's 1974 decision in *Talbot* to consider its effect on the question before us.

¶ 41 There, the City of Seattle granted the Grays "a permit" authorizing them to construct a dock.⁵⁹ The

Grays' neighbors, the Talbots and the Hartmans, brought an action to permanently enjoin the City from authorizing the construction of a dock in the shoreline area along Lake Washington.⁶⁰

¶ 42 Primarily at issue was whether the City had correctly applied the provisions of its zoning ordinance in issuing the permit for construction of the dock.⁶¹ This court construed the City zoning ordinance and rejected the contention that the dock was not permitted as an "accessory use."⁶²

*207 ¶ 43 The court then considered the contention that the owners of the property where the dock was to be built had not given proper notice under the Shoreline Management Act of 1971, as implemented by Seattle's ordinance.⁶³ Specifically, the notice was given as required by the state statute and before the effective date of the Seattle implementing ordinance.⁶⁴ Thus, the question was which notice provision prevailed.⁶⁵

¶ 44 This court answered the question as follows:

[The permit applicant's] obligations and rights to develop vested on November 18, 1971, when they applied for a *substantial development permit*. The applicable rule adopted by the court in *Hull v. Hunt*, 53 Wash.2d 125, 331 P.2d 856 (1958) and recently approved in *Eastlake Community Council v. Roanoke Assoc., Inc.*, 82 Wash.2d 475, 481, 513 P.2d 36 (1973) is

"[T]he right vests when the party ... applies for his *building permit*, if that permit is thereafter issued. This rule, of course, assumes that the permit applied for and granted be consistent with the zoning ordinances and building codes in force at the time of application for the permit."⁶⁶

¶ 45 Potala Village argues that we should read *Talbot* to require applying the vested rights doctrine to this case, despite its failure to file an application for a building permit **1151 before passage of the moratorium. We decline to do so.

¶ 46 First, in that case, the property owners who sought to construct a dock in the shoreline area applied for and received what can properly be described as a building permit under the City's zoning ordinances.⁶⁷ Here, unlike *208 that case, Potala Village failed to file any application for a building permit before the moratorium went into effect.

¶ 47 Second, as the above excerpt from *Talbot* shows, this court applied the common law rule regarding vested rights for *building permit* applications to the shoreline

substantial development permit application under the facts of that case.⁶⁸ But we do not read that 1974 decision to support Potala Village's argument in this case—that the February 23, 2011 filing of an application for a shoreline substantial development permit for a portion of this project vests rights to the zoning or land use control ordinances for the entire project that existed as of that date. We simply cannot agree with this argument because it directly contradicts the development of the law in *Erickson*, *Abbey Road*, and *Town of Woodway*.⁶⁹

¶ 48 Potala Village makes a number of arguments to support its assertion that the vested rights doctrine applies to shoreline substantial development permits. None are persuasive.

¶ 49 First, Potala Village cites a number of cases to support its assertion.

¶ 50 Two of these cases on which it relies were decided before the 1987 legislation that we discussed previously in this opinion.⁷⁰ Thus, they are not persuasive.

¶ 51 Potala Village also relies on the supreme court case, *Buechel v. State Department of Ecology*, which was decided after 1987.⁷¹ But that case did not expressly consider the issue present in this case because the landowner applied for a building permit and a variance.⁷² Thus, that case is unlike this case where there is no building permit application.

*209 ¶ 52 Two other cases that Potala Village cites are not supreme court cases and were decided before *Abbey Road* and *Town of Woodway*.⁷³ Thus, they are not persuasive.

¶ 53 Second, Potala Village contends that *Abbey Road* and *Erickson* recognize that statutes “supplement[] common law vesting.”⁷⁴ It points to language in these opinions that it claims supports recognizing the common law vested rights doctrine.⁷⁵ *Abbey Road* points to *Erickson*, which stated,

Erickson contends the Court of Appeals decision in this case conflicts with prior decisions applying the vested rights doctrine in other contexts. *See, e.g., Talbot v. Gray*, 11 Wash.App. 807, 811, 525 P.2d 801 (1974) (shoreline permit).... We agree with Erickson that our prior cases apply the vested rights doctrine in other contexts besides building permits.⁷⁶

¶ 54 But, as previously discussed, the supreme court also explained in those cases that the legislature “codified these judicially recognized principles” in 1987.⁷⁷ And most **1152 recently the supreme court expressly stated

that “the vested rights doctrine *is now statutory*.”⁷⁸ Given the supreme court's statements in these cases, we reject Potala Village's arguments to the contrary.

¶ 55 Third, Potala Village argues that “*Abbey Road* and *Erickson* are substantively irrelevant because both cases addressed permits which were exclusively created by cities, unlike the state's shoreline permit requirement.”⁷⁹ It *210 also asserts that the shoreline permit review process is rigorous and much like the building permit review process.⁸⁰ Whether or not these assertions are true, the legislature has not extended vested rights principles to shoreline permits. Potala Village points to no authority that allows this court to “ignore the legislative directive” that vested rights principles applies in specified circumstances, which do not include shoreline permits.⁸¹ Thus, these arguments are not persuasive.

¶ 56 Fourth, Potala Village cites *Noble Manor Co. v. Pierce County* to assert that the “vested rights doctrine was originally established through common law, but now is based on both common law and statutory authority, depending on the type of permit application involved.”⁸²

¶ 57 There, the supreme court was concerned with the filing of a short plat application.⁸³ It explained the development of vested rights:

At common law, this state's doctrine of vested rights entitled developers to have a land development proposal processed under the regulations in effect at the time a complete **building permit** application was filed. *Erickson & Assocs., Inc. v. McLerran*, 123 Wash.2d 864, 867–68, 872 P.2d 1090 (1994). The doctrine at common law was extended to a number of **different types of permits**, but it was never extended to applications for preliminary plat approval or short plat approval.

In 1987, the Legislature (1) codified the traditional common-law vested rights doctrine regarding vesting upon application of building permits, and (2) enlarged the vesting doctrine to also apply to subdivision and short subdivision applications. The two parts of that statute were codified at **RCW 19.27.095** (in the state building code statute) and **RCW 58.17.033 *211** (in the plats and subdivision statute).⁸⁴

Importantly, the supreme court did not consider whether these statutes replaced the common law doctrine for “different types of permits.”⁸⁵ The court did not need to address this issue because the short plat permit application was addressed by the statutes.⁸⁶

¶ 58 However, *Noble Manor* contains language that

supports Potala Village's argument that the vested rights doctrine is now "based on both common law and statutory authority, depending on the type of permit application involved."⁸⁷ There, the *Noble Manor* court explained why *Erickson* did not extend the vested rights doctrine to master use permit applications:

There was *no case law or statutory authority* to support extending the vested rights doctrine to MUP applications. This is in contrast to the present case where the Legislature has extended the doctrine to plat applications. The *Erickson* decision stands for the proposition that this Court will not extend the vested rights doctrine by judicial expansion. However, the Court of Appeals decision in the present case is ****1153** based not on common-law extension of the doctrine but on the legislative extension of the doctrine to subdivision applications in RCW 58.17.033.⁸⁸

¶ 59 While this language from *Noble Manor* supports Potala Village's argument, this case came before *Abbey Road* and *Town of Woodway*, where the supreme court appears to have rejected the notion that the vested rights doctrine is based on both common law and statutes.

***212** ¶ 60 Similarly, Potala Village cites *Weyerhaeuser v. Pierce County* to assert that the "vested rights doctrine, and the protections it affords, are the same protections irrespective of whether the doctrine applies as a result of common law or statute."⁸⁹ But, as just discussed, that Division Two case also came before *Abbey Road* and *Town of Woodway*. Moreover, the *Abbey Road* court expressly rejected a similar argument regarding *Weyerhaeuser*.⁹⁰ Thus, that case is also not helpful.

¶ 61 Fifth, Potala Village contends that the City "improperly frustrated the building permit application process by asserting it could require a new building permit application in the event it required any changes to the project after shoreline review."⁹¹ Potala Village asserts that this case is like *West Main Associates v. City of Bellevue*.⁹² But that case is distinguishable.

¶ 62 There, the supreme court explained that a person's right to develop property is "beyond question a valuable right in property."⁹³ And this right is partly protected by the vested rights doctrine.⁹⁴

¶ 63 The court then considered whether a Bellevue ordinance met the due process standards of the Fourteenth Amendment.⁹⁵ That ordinance required a person to take a number of steps before filing a building permit application, which would give the person the ability to vest rights in the existing ***213** laws.⁹⁶ The court concluded that the ordinance violated due process:

The City denies a developer the ability to vest rights until after a series of permits is obtained. The ordinance thus is unduly oppressive upon individuals. As the trial court noted, the pre-application procedures established by the ordinance are vague and discretionary. The City delays the vesting point until well after a developer first applies for City approval of a project, and reserves for itself the almost unfettered ability to change its ordinances in response to a developer's proposal. The ordinance completely upsets our vesting doctrine's protection of a citizen's constitutional right to develop property free of the "fluctuating policy" of legislative bodies.⁹⁷

¶ 64 Here, Potala Village fails to cite any law that prevented it from filing a building permit application before the November 2011 moratorium. Thus, *West Main Associates* does not support the argument.

¶ 65 The parties have expressly agreed that there are no genuine issues of material fact. Thus, we do not consider arguments to the extent they are based on alleged factual disputes over communications between Potala Village and the City regarding the possible filing of a building permit prior to the time Potala Village actually applied for one. And, as we stated previously in this opinion, the validity of the moratorium is not at issue in this appeal. Thus, there is no reason to apply the principles of *West Main Associates* to this case.

****1154** ¶ 66 To summarize, Potala Village's failure to file a completed application for a building permit before enactment of the City's moratorium on certain permits bars the vesting of rights to zoning or other land use control ordinances for the entire project. The filing of Potala Village's completed application for a shoreline substantial development permit for a portion of the project on February 23, ***214** 2011 did not vest rights to the zoning or other land use control ordinances for the entire project that existed on that date.

¶ 67 The City states in its briefing that *Talbot*, the 1974 decision of this court, may support permit vesting to the "shoreline regulations in effect" at the time of its application for the shoreline substantial development permit.⁹⁸ Because that question is not before us, we express no opinion on it.

¶ 68 Finally, we express no opinion on whether or to what extent the vested rights doctrine applies to permits other than shoreline substantial development permits. These questions are not before us.

**CITY OF BLACK DIAMOND, WASHINGTON
ORDINANCE NO. _____**

AN ORDINANCE OF BLACK DIAMOND, WASHINGTON, RELATING TO PROJECT PERMIT PROCESSING, REPEALING THE CITY'S EXISTING REGULATIONS ON VESTING, ADDING DEFINITIONS, DESCRIBING THE PROCEDURE FOR DETERMINING THE COMPLETENESS OF A PROJECT PERMIT APPLICATION, DESCRIBING THE ELEMENTS OF A DETERMINATION OF COMPLETE/INCOMPLETE APPLICATION, DESCRIBING THE EFFECT OF SUCH DETERMINATION, ADDING A NEW PROCEDURE THAT ALLOWS THE CITY TO DETERMINE THAT AN APPLICATION HAS EXPIRED FOR THE APPLICANT'S FAILURE TO PROVIDE THE INFORMATION REQUESTED BY THE CITY AND PROHIBITING THE "HOLDING" OF APPLICATIONS BY THE STAFF FOR INDEFINITE PERIODS OF TIME, ADDRESSING EXPIRATION OF PROJECT PERMIT APPLICATIONS, REPEALING CHAPTER 18.14 AND ADDING A NEW CHAPTER 18.14 TO THE BLACK DIAMOND MUNICIPAL CODE AND SETTING AN EFFECTIVE DATE.

WHEREAS, the City of Black Diamond is required to adopt procedures for the processing of project permit applications (as defined in RCW 36.70B.020) to conform to chapter 36.70B RCW; and

WHEREAS, RCW 36.70B.070 requires that the City establish procedures to determine the completeness of applications, which requires that the City provide a determination of completeness or incompleteness in writing to an applicant within 28 days after the submission of an application; and

WHEREAS, once the City issues a notice of incompleteness to an applicant, the applicant has the discretion to ~~the~~ submit additional information or not; and

WHEREAS, the City desires to establish a clear process whereby an application will expire or lapse, if the applicant fails to respond to the City's notice of incomplete application by providing the requested information by a certain deadline; and

WHEREAS, although the City's existing code provisions describe a process for "lapsing" of applications, it is mixed with an interpretation of the vested rights doctrine that is not consistent with applicable law; and

WHEREAS the City’s existing code includes provisions relating to the vested rights doctrine that are unnecessary and are inconsistent with state law and applicable case law (RCW 19.27.095(1) and RCW 58.17.033; *Potala Village Kirkland LLC v. City of Kirkland*, 183 Wash. App. 191, 334 P.3d 1143 (2014) by extending the vested rights doctrine to all “project permit applications;” and

WHEREAS, the City SEPA Responsible Official determined that this Ordinance was exempt from SEPA under WAC 197-11-800(19); and

WHEREAS, there was a public hearing on this Ordinance before the Planning Commission on _____, 2015 and the Planning Commission recommended that _____

WHEREAS, the City Council introduced this Ordinance on _____, 2015, during a regular Council meeting; and

WHEREAS, the City Council considered this Ordinance for adoption on _____, 2015; Now, Therefore,

IT IS HEREBY ORDAINED BY THE BLACK DIAMOND CITY COUNCIL AS FOLLOWS:

Section 1. Chapter 18.14 of the Black Diamond Municipal Code is hereby repealed.

Section 2. A new Chapter 18.14 of the Black Diamond Municipal Code is hereby added, which shall read as follows:

What do you want to call this chapter? Permit Processing Standards?
CHAPTER 18.14

Sections:

- 18.14.010 Definitions.**
- 18.14.020 Determination of Completeness.**
- 18.14.030 Deadline for Submission of Materials Prior to Hearing.**
- 18.14.040 Changes or Additions to Application During Review Period.**
- 18.14.050 Duration of Approvals.**

18.14.010 Definitions. For purposes of this chapter, the following definitions apply:

A. “Complete project permit application” means a project permit application that meets the requirements established in the Black

Diamond Municipal Code and administrative regulations needed for a complete application, including the payment of applicable fees.

B. “Lapse” means that any project permit application submitted to the City for processing is expired and/or void under BDMC Section 18.14.____.

C. “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.

18.14.020. Determination of completeness.

A. *Deadline.* Within twenty-eight (28) days after receiving a project permit application, the City shall mail or personally deliver to the applicant, a determination which states either: (1) that the application is complete; or (2) that the application is incomplete and exactly what is necessary to make the application complete.

B. *What must be included.* If more than one application is submitted under the consolidated permit review process, the determination of completeness shall include all project permits being reviewed in a consolidated manner. To the extent known by the City, other agencies with jurisdiction over the project shall be identified in the determination of completeness. However, it is the applicant’s responsibility to determine which permits are required from other agencies for a development, and to submit the appropriate permit applications.

D. *Required elements.* A determination of completeness is made by the City when the application includes all of the elements identified in the development regulations in this chapter as well as the chapter relating to the individual permit/approval. The City’s issuance of a determination of completeness means that the application is sufficiently complete to initiate review, even though additional information may be required by the City during processing or when subsequent application modifications are made. Issuance of a determination of completeness does not bar the City from requesting additional information or studies whenever new information is required, or substantial changes are made to the proposal.

E. *Deemed Complete.* If a determination of completeness is not issued by the City as provided in this section and within the deadlines established herein, the permit/approval application shall be deemed complete.

F. *Effect of Determination of Completeness or Application Deemed Complete.* If an application has been determined complete or deemed complete under this section, it does not mean that the application is “vested” to the applicable development regulations in place at the time the application was determined complete or deemed complete under this section. Not all project permit applications are subject to the vested rights doctrine. An application that is “deemed complete” may not trigger vesting. The City will not make any determination whether an application is vested prior to the time that the City has determined that the application is consistent with the applicable development regulations.[†]

Formatted: Strikethrough

G. *Incomplete Applications.* Once the applicant receives notice of an incomplete application, the applicant has two choices. The applicant may:

1. Submit the information requested by the City within ninety (90) days. If the additional information is submitted within this time period, the ~~Community Development~~ ~~Planning~~ Director shall re-initiate the process for a determination of completeness in Subsection A above, and notify the applicant within fourteen (14) days of the receipt of the additional information whether the application is complete or incomplete. If another notice of incomplete application is sent to the applicant, the process shall continue until the City issues a determination of completeness.

2. Fail (or refuse) to submit the information requested by the City within ninety (90) days. After this period expires, the Planning Director shall send a letter by certified mail to the applicant, informing the applicant that unless the information is received within thirty (30) days from the date of the letter, the Director will make written findings and issue a decision that the application has expired for lack of the information necessary to complete review and processing. The decision shall be sent to the applicant, and will also state that the City shall take no further action on the application, and if no arrangements are made within thirty (30) days to pick up the application materials, they will be destroyed. If the application expires under this procedure, the applicant may request a refund of the application fee remaining after the City’s determination of incompleteness. A decision that an application has expired does not

[†] ~~See, *Allenbach v. Tukwila*, 101 Wn.2d 193, 676 P.2d 473 (1984) (an application subject to the vested rights doctrine must be processed according to the building and land use control ordinances in place at the time a complete application is submitted, as long as the application is consistent with the applicable development regulations and the permit issues).~~

Formatted: Strikethrough

preclude the applicant from submitting new applications which are the same or substantially similar to the expired application.

H. *“Holding” of Applications.* Applicants may not request that the City “hold” incomplete or complete applications in abeyance, indefinitely or for any set period of time. Once an application is submitted to the City, it will be processed according to the timeframes in this Title to a final decision, or the applicant may withdraw the application.²

Formatted: Strikethrough

18.14.030. Deadline for Submission of Materials Prior to Decision/Hearing. All documents and other evidence in support of an application and relied upon by the applicant for approval shall be submitted to the Community Development Director no more than seven (7) days after the City issues the notice of application or the notice of public hearing on the application.³ Documents or evidence submitted after that date shall be received by the Director, but may be too late to be considered in the decision (if no hearing is allowed before an appeal). If a hearing is allowed on the application, documents or evidence received after that date shall be received by the Director and transmitted to the hearing body, but may be too late to include with or to integrate in the staff report and staff’s evaluation of the application.

Formatted: Strikethrough

18.14.040 Changes or Additions to Application During Review Period.

A. When documents or other evidence are submitted by the applicant during the review period but after the application is determined (or deemed) complete, the assigned reviewer shall determine whether or not the new documents or other evidence submitted by the applicant significantly revise the application. Some of the factors that the City may consider as significantly revising the application include, but are not limited to, adding/subtracting from the property originally included in the application, making changes in the proposed use, expansion of any proposed structures, revisions requiring additional potable water and/or sewer, etc.⁴

Formatted: Strikethrough

Formatted: Strikethrough

²—When state law requires the city to adopt new regulations or the city announces that it will soon adopt new regulations, a developer may submit an application for development in order to vest under the old regulations, even if the developer has no plans to construct the development in the immediate future. The developer will take pains to submit all information necessary for a complete application, but then asks the city to “hold” the application (sometimes for years) until the developer is ready to construct the development. In this way, the developer attempts to evade compliance with the new regulations.

³—These notices are covered in chapter ____.

⁴—See, *Families of Manito v. City of Spokane*, 172 Wash. App. 727, 291 P.3d 930 (2013) (site plan application was not a substantial revision to original application or constitute a new application where the plan did not change the use of the property or site area, did not substantially change the density or the traffic patterns, although the number of parking spaces did increase).

B. If the assigned reviewer determines that the new documents or other evidence significantly change the application, the reviewer shall include a written determination that a significant change in the application has occurred. Such a determination may trigger the need for additional review and submission of additional information, including, but not limited to, revised application materials and a new SEPA ~~Checklist~~ determination. In the alternative, the reviewer may inform the applicant either in writing, or orally at the public hearing, that such changes may constitute a significant change (see subsection C below), and allow the applicant to withdraw the new materials submitted.

C. If the applicant's new materials are determined to constitute a significant change in an application that was previously determined complete, the City shall take one of the following actions:

1. If the applicant chooses to withdraw the new materials which constitute a significant change in the application, the City shall continue to process the existing application without considering the new documents or other evidence; or

2. Allow the applicant to submit a new application with the proposed significant changes, immediately after the existing application is withdrawn. If the applicant chooses this option, the application shall be subject to an additional fee, separate review for completeness, and will be subject to the standards and criteria in effect at the time the complete new application was submitted.

18.14.050. Duration of approvals – Effect of permit expiration.

A. Except where a different duration is established elsewhere in the Black Diamond Municipal Code or by an executed development agreement or applicable law, all project permits shall expire two years after the date of issuance if construction of the project has not substantially begun; provided, an extension of the permit may be granted as allowed under subsection B.

B. The City may extend the date of permit expiration for permits subject to subsection A above for up to two years with good cause shown by the permittee, and as long as the permittee submits a written request at least thirty days prior to the expiration of the permit. Requests for extensions shall be submitted in writing, together with payment of a fee equal to one-half of the permit application fee in effect at the time the request for an extension is filed. The "good cause" that must be described in the written request for an extension shall include documentation of the facts supporting the permittee's claim that he/she was unable to substantially begin construction during the life of the original permit

because of circumstances that were beyond the permittee's control and not foreseeable at the time of permit issuance. The ~~permitee~~ permittee must also demonstrate the ability to complete the project within the extended time period.

Section 3. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 4. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 5. Effective Date. This Ordinance shall take effect and be in full force and effect five days after publication, as provided by law.

PASSED by the City Council of Black Diamond this ____nd day of ____, 2015.

Mayor Carol Benson

AUTHENTICATED:

City Clerk, Brenda Martinez

APPROVED AS TO FORM:
Office of the City Attorney

Carol Morris, City Attorney

PUBLISHED:
EFFECTIVE DATE: