

DRAFT
CITY OF BLACK DIAMOND, WASHINGTON
ORDINANCE NO. 15-XXXX

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 April 7, 2015, 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:

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.~~050~~.

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.¹

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

¹ 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**).

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

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.

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

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: