

ORDINANCE NO. 14-1025

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, RELATING TO LAND USE AND ZONING, ADOPTING A MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR NEW DEVELOPMENT WITHIN THE MASTER PLANNED DEVELOPMENT (MPD) DISTRICT, EXCLUDING ANY APPLICATIONS SUBJECT TO THE DEVELOPMENT AGREEMENTS APPROVED FOR THE MPD DEVELOPMENTS ENTITLED THE VILLAGES AND LAWSON HILLS; AND SUCH MORATORIUM TO BE EFFECTIVE IMMEDIATELY, DEFINING THE APPLICATIONS SUBJECT TO THE MORATORIUM, DIRECTING STAFF TO SET A DATE FOR A PUBLIC HEARING ON THE MORATORIUM WITHIN THE NEXT SIXTY DAYS, ESTABLISHING SIX MONTHS AS THE TENTATIVE EFFECTIVE PERIOD UNTIL THE COUNCIL PUBLIC HEARING ON THE CONTINUED MAINTENANCE OF THE MORATORIUM, AND DECLARING AN EMERGENCY NECESSITATING IMMEDIATE ADOPTION OF A MORATORIUM.

WHEREAS, the City recently approved two major Master Development Plan projects (the “Villages” included 1,196 acres, to be developed with a maximum of 4,800 low, medium and high density dwelling units, and a maximum of 775, 000 square feet of retail, offices, commercial and light industrial development, schools, recreation and open space; and “Lawson Hills” involves a maximum of 1,250 low, medium and high density dwelling units on 371 acres and a maximum of 390,000 square feet of retail, offices, commercial and light industrial development, schools, recreation and open space);¹ and

WHEREAS, the City Council is planning to hire a consultant to assist the City with its comprehensive plan amendment process, which will address the growth issues related to these approvals; and

¹ These decisions were appealed in *Toward Responsible Development v. City of Black Diamond*, 2014 WL 295838, Court of Appeals, Div. I, January 27, 2014.

WHEREAS, the City also desires to review its development regulations for consistency with the Comprehensive Plan and existing law; and

WHEREAS, these planning efforts would be thwarted if property owners could submit applications for development and “vest” under the existing codes; and

WHEREAS, the City Council may adopt an immediate moratorium for a period of up to six months on the acceptance of certain development permit applications as long as the City Council holds a public hearing on the proposed moratorium within sixty days after adoption (RCW 35A.63.220, RCW 36.70A.390); and

WHEREAS, the City desires to impose an immediate six-month moratorium on the acceptance of development applications for any “development activity,” “development permit” or “project permit” as defined below, for any property within the Master Plan Development (MPD) district, as shown on the City’s Official Zoning Map, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference; Now, therefore,

THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON,
ORDAINS AS FOLLOWS:

Section 1. Definitions. For the purpose of this Ordinance, the following definitions shall apply:

A. **“Exempt Development Permits”** shall include all of the following permit applications for “development” or “development activity” defined in Black Diamond Municipal Code (BDMC) Section 18.98.005 and for “project permit” applications as defined in BDMC 18.14.010, which: (1) are subject to the Development Agreements executed by the City for The Villages and Lawson Hills; or (2) were determined complete by City staff and submitted to the City on or before the effective date of this Ordinance; or (3) propose development or a

development activity on property located outside the MDP Zone as identified in the City's Official Zoning Map; or (4) any applications for permits which involve interior remodeling of existing structures in the MPD Zone.

B. **“Non-Exempt Development Permits”** shall include any permits or “project permit applications” for any “development activity” defined in the Black Diamond code sections identified above, proposed to take place on property located within the MPD Zone and submitted after the effective date of this Ordinance.

Section 2. Purpose. The purpose of this moratorium is to allow the City to review and analyze the growth, environmental and secondary land use impact of the two large developments approved for the Villages and Lawson Hills on the City, and to determine whether any changes need to be made in the City's Comprehensive Plan and development regulations relating to MPD's. If necessary, the City will propose new Plan and development regulation amendments, hold the necessary public hearings, obtain Planning Commission recommendations and adopt ordinances.

Section 3. Moratorium Imposed. The City Council hereby imposes an immediate six-month moratorium on the acceptance of all non-exempt development permit applications for development activities on property located within the MPD Zone, as shown in the map attached hereto as Exhibit A, which is derived from the City's Official Zoning Map. All such non-exempt applications shall be rejected and returned to the applicant. With regard to the City's acceptance of any exempt development application, such acceptance shall only allow processing to proceed, but shall not constitute an assurance that the application will be approved.

Section 4. Duration of Moratorium. The moratorium imposed by this Ordinance shall commence on the effective date of this Ordinance. As long as the City holds a public hearing on

the moratorium and adopts findings and conclusions in support of the moratorium (as contemplated by Section 5 herein), the moratorium shall not terminate until six (6) months after the date of adoption, or at the time all of the tasks described herein have been accomplished, whichever is sooner. The Council shall make the decision to terminate the moratorium by ordinance, and termination shall not otherwise be presumed to have occurred.

Section 5. Public Hearing on Moratorium. Pursuant to RCW 36.70A.390 and RCW 35A.63.220, the City Council shall hold a public hearing on this moratorium within sixty (60) days of its adoption, or before May 19, 2014. Immediately after the public hearing, the City Council shall adopt findings of fact on the subject of this moratorium and either justify its continued imposition or cancel the moratorium.

Section 6. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional 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 7. Declaration of Emergency. The City Council hereby declares that an emergency exists necessitating that this Ordinance take effect immediately upon passage by a majority vote plus one of the whole membership of the Council, and that the same is not subject to a referendum (RCW 35A.12.130). Without an immediate moratorium on the City's acceptance of non-exempt development applications for property in the MPD Zone, such applications could become vested, leading to development that could be incompatible with the Comprehensive Plan and development regulations eventually adopted by the City. Therefore, the moratorium must be imposed as an emergency measure to protect the public health, safety and welfare, and to prevent the submission of a flood of applications to the City in an attempt to

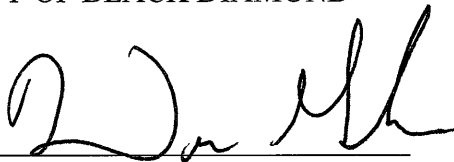
vest rights for an indefinite period of time. This Ordinance does not affect any existing vested rights, nor will it prohibit all development in the City, because those property owners with exempt applications/permits, and those with previously obtained approvals for development may proceed with processing and development, as the case may be.

Section 8. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 9. Effective Date. This Ordinance shall take effect and be in full force and effect immediately upon passage, as set forth in Section 7, as long as it is approved by a majority plus one of the entire membership of the Council, as required by RCW 35A.12.130.

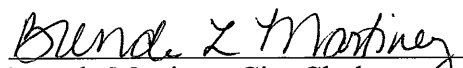
PASSED by the Council and approved by the Mayor of the City of Black Diamond, this 20th day of March, 2014.

CITY OF BLACK DIAMOND



Mayor Dave Gordon

ATTEST/AUTHENTICATED:



Brenda Martinez, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Carol A. Morris, City Attorney

FILED WITH THE CITY CLERK:

PASSED BY THE CITY COUNCIL: 3/20/2014
PUBLISHED: 3/25/2014
EFFECTIVE DATE: 3/20/2014
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