

**ORDINANCE NO. 14-1030**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, RELATING TO LAND USE AND ZONING, AMENDING THE BLACK DIAMOND MUNICIPAL CODE PROVISIONS RELATING TO DEVELOPMENT AGREEMENTS, REQUIRING CONSISTENCY BETWEEN EXISTING DEVELOPMENT REGULATIONS AND DEVELOPMENT AGREEMENTS, IDENTIFYING THE ELEMENTS OF AN APPLICATION OF A DEVELOPMENT AGREEMENT, DESCRIBING THE PROCEDURE FOR PROCESSING DEVELOPMENT AGREEMENTS, CLARIFYING THE EFFECT, FORMAT, REQUIREMENTS FOR PUBLIC HEARING, RECORDING AND APPEALS; AMENDING BDMC SECTION 18.66.010; REPEALING SECTION 18.66.020; ADDING NEW SECTIONS 18.66.020, 18.66.030, 18.66.040 AND 18.66.050 AND ESTABLISHING AN EFFECTIVE DATE.

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WHEREAS, the process in chapter 18.66 BDMC on the subject of development agreements is inconsistent with state law (RCW 36.70B.170(1)), which requires that “a development agreement shall be consistent with applicable development regulations adopted by a local government planning under chapter 36.70A RCW”; and

WHEREAS, state law does not allow the City’s development regulations to be “modified in the development agreement” (as currently provided in BDMC Section 18.66.020); and

WHEREAS, chapter 18.66 BDMC does not clearly state that development agreements are discretionary, the purpose for which such agreements should be used, the procedure for processing development agreements and the manner in which appeals of development agreement may be filed; and

WHEREAS the SEPA Responsible Official has determined that this Ordinance is categorically exempt from SEPA as affecting only procedural and no substantive standards, pursuant to WAC 197-11-800(19); and

WHEREAS, the City Council held a public hearing on this Ordinance on July 17, 2014;  
and

WHEREAS, the City Council considered this Ordinance during its regular City Council meeting on August 21, 2014; Now, Therefore,

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

Section 1. Amendment of Section 18.66.010. Section 18.66.010 of the Black Diamond Municipal Code is hereby amended to read as follows:

**18.66.010 Intent and Discretionary Nature.**

~~The purpose of this chapter is to authorize the use of development agreements, consistent with RCW 36.70B.170 through RCW 36.70B.210. as authorized by state law, as a means to document conditions and procedures for certain types of development and to thereby provide greater certainty to the city, applicants and the public regarding how property will be developed. Development agreements may be used for any type of proposals but are anticipated to be applied most often to master planned development per chapter 18.98 and to other large, complex, phased, and/or sensitive development proposals where useful.~~

The City may, but under no circumstances is required to, enter into a development agreement with a person having ownership or control of real property within the City. The development agreement may address such project elements as those set forth in RCW 36.70B.170B(3). The development agreement shall be consistent with the applicable development regulations of the City. The consideration provided by the property owner for the City's decision to enter into the development agreement may vary, depending on the benefit the development agreement will provide to the City and/or the public in general.

Section 2. Repeal of Section 18.66.020. Section 18.66.020 of the Black Diamond Municipal Code is hereby repealed.

Section 3. Adoption of new Section 18.66.020. A new section 18.66.020 is hereby added to the Black Diamond Municipal Code:

**18.66.020 Form of Agreement, Effect and General Provisions.**

- A. Form. All development agreements shall be on the standard form approved in advance by the City Attorney for this purpose.
- B. Effect. Development agreements are not project permit applications and are not subject to the permit processing procedures in chapter \_\_\_ of the BDMC. A development agreement shall constitute a binding contract between the City and the property owner and the subsequent owners of any later-acquired interests in the property identified in the development agreement.
- C. Limitations. Any provision of the development agreement which requires the City to: (1) refrain from exercising any authority; (2) forego adoption of any development regulations affecting the property identified in the agreement; (3) allow vesting beyond the applicable deadlines for a phased development; shall be limited to a period of \_\_\_\_ ( ) years. The development agreement shall also contain a proviso that the City may, without incurring any liability, engage in action that would otherwise be a breach if the City makes a determination on the record that the action is necessary to avoid a serious threat to public health and safety, or if the action is required by federal or state law.
- D. Developer's Compliance. The development agreement shall include a clause stating that the City's duties under the agreement are expressly conditioned upon the property owner's substantial compliance with each and every term, condition, provision and/or covenant in the development agreement, all applicable federal, state and local laws and regulations and the property owner's obligations as identified in any approval or project permit for the property identified in the development agreement.
- E. No Third Party Rights. Except as otherwise provided in the development agreement, the development agreement shall create no rights enforceable by any party who/which is not a party to the development agreement.
- F. Liability. The development agreement shall include clause providing that any breach of the development agreement by the City shall give right only to damages under state contract law and shall not give rise to any liability under chapter 64.40 RCW, the Fifth and Fourteenth Amendments to the U.S. Constitution or similar state constitutional provisions.
- G. Termination and Modification. Every development agreement shall have an identified, specific, termination date. Upon termination, any further development of the property shall conform to the development regulations applicable to the property. The City shall not modify any development agreement by extending the termination date. Any request for modification shall be consistent with the City's development regulations applicable to the property at the time or request, not the original execution date of the development agreement.

Section 4. A new Section 18.66.030 is hereby added to the Black Diamond Municipal

Code, which shall read as follows:

**18.66.030 Application Requirements.** A complete application for a development agreement shall consist of the following:

- A. Name, address, telephone number and e-mail address (if any) of the property owner. If the applicant is not the property owner, the applicant must submit a verified statement from the property owner that the applicant has the property owner's permission to submit the application;
- B. Address, parcel number and legal description of the property proposed to be subject to the development agreement;
- C. Recent title report confirming that the property identified in the application is owned by the applicant/property owner;
- D. Identification of any application (project permit application, comprehensive plan amendment application, development regulation amendment application) that is related to the proposed development agreement;
- E. SEPA Checklist;
- F. A completed application form and the application fee established by the City for this purpose; and
- G. Any other information requested by the Community Development Director relevant to the processing of the development agreement.

Section 5. A new Section 18.66.050 is hereby added to the Black Diamond Municipal

Code, which shall read as follows:

**18.66.050. Phasing.**

- A. In order to phase a project to extend the vested rights associated with an underlying project permit application, a development agreement is required. This ensures the availability of public facilities and services to all of the property in the identified individual phases, allows tracking of the available capacity of public facilities and utilities during each phase of construction, and with the extension of the vested rights associated with the project, provides certainty to the developer in the subsequent development approval process.
- B. The deadlines in the City's code relating to each type of project permit application must be consulted to establish the baseline vesting period. The City is

not required to extend the vesting period. If the City decides to do so through a development agreement, it must be in exchange for the property owner's provision of corresponding benefits to the City in the form of, for example, contributions to public facilities and amenities over and above what would normally be required. In any event, the City shall not allow vesting to extend beyond the established \_\_\_\_ ( ) year period after approval of the project permit application.

C. A development agreement for a phased development (such as a subdivision) shall include (in addition to all of the information in Section 18.66.030), all of the following:

1. identification of the phasing schedule;
2. identification of the number of phases and all lots included in each phase;
3. identification of the approximate dates for construction of public streets, public utilities and other improvements in each phase;
4. identification of the approximate dates for commencement of development of each lot, lot sales and building occupancy;
5. identification of the benefits that the property owner will provide to the City in exchange for permission to phase the development according to the proposed schedule;
6. establishment of the deadline for the property owner to submit development applications, including building permit applications, for each phase;
7. a description of the manner in which each phase is designed such that all site requirements are satisfied independently of phases yet to be given final approval and constructed;
8. a description of the manner in which the property owner will ensure that adequate public facilities are available when the impact of development occurs. The property owner shall acknowledge in the development agreement that if the demand for public facilities or services needed to accommodate a subsequent development phase increases following the issuance of a development permit for a prior phase in the approval process, or if public facilities or services included in a concurrency or SEPA determination are not constructed as scheduled in the City's capital facilities plan, final development approval may have to be delayed for future phases pending the achievement of the adopted levels of service.

Section 7. A new Section 18.66.050 is hereby added to the Black Diamond Municipal Code, which shall read as follows:

**18.66.050 Processing Procedures.**

A. Consolidation. Whenever possible, the development agreement shall be consolidated for processing with an underlying project permit application or other

application for a legislative approval. If the development agreement is consolidated with a project permit application, the property owner must agree to waive the deadline in RCW 36.70B.080 and BDMC Section 18.14.020(A) for issuance of a final decision on the underlying application, as well as the prohibition on no more than one open record hearing and one closed record hearing on the underlying project permit application in RCW 36.70B.060(3) and BDMC Sections 2.30.100 and 18.08.070.

B. Public Hearing. While the Hearing Examiner may provide a recommendation on a development agreement (even if the Hearing Examiner makes the final decision on the underlying project permit application), the City Council shall make the final decision whether to approve a development agreement by ordinance or resolution after a public hearing. Modifications to a development agreement shall be in writing, signed by the duly authorized representatives of the parties, be consistent with this chapter and follow the same procedures set forth in this chapter.

C. Appeal. A development agreement associated with an underlying project permit application may be appealed in the same manner and within the same deadline as the underlying project permit application. A development agreement associated with a legislative approval, such as a comprehensive plan amendment, may be appealed in the same manner and within the same deadline as the legislative approval.

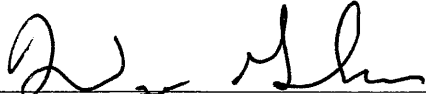
D. Recording Against the Property. The City shall record the development agreement against the property with the real property records of the King County Department of Records and Elections. During the term of the agreement, it is binding upon the owners of the property and any successors in interest to such property.

Section 7. 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.

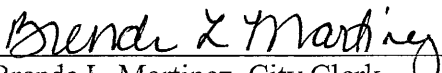
Section 10. Effective Date. This Ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the Council and approved by the Mayor of the City of Black Diamond, this 21<sup>st</sup> day of August, 2014.

CITY OF BLACK DIAMOND

  
\_\_\_\_\_  
Mayor Dave Gordon

ATTEST/AUTHENTICATED:

  
\_\_\_\_\_  
Brenda L. Martinez, City Clerk

APPROVED AS TO FORM:  
Office of the City Attorney

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Carol A. Morris, City Attorney

FILED WITH THE CITY CLERK: 08/22/14  
PASSED BY THE CITY COUNCIL: 08/21/14  
PUBLISHED: ~~08/25/14~~ 8/26/14  
EFFECTIVE DATE: ~~08/30/14~~ 8/31/14  
ORDINANCE NO: 14-1030