

ORDINANCE NO. 15-1046

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 TO ESTABLISH THE DURATION OF SUCH AGREEMENTS TO BE NO MORE THAN TWENTY YEARS, AMENDING SECTIONS 18.66.020 AND 18.66.040 OF THE BLACK DIAMOND MUNICIPAL CODE AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City adopted Ordinance No. 14-1030 establishing the process for Development Agreements, but did not enter a time period as required for in sections 18.66.020 (C) and 18.66.040 (B); 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, this Ordinance was introduced to the City Council for the first time on June 5, 2014; and

WHEREAS, the City Council held a public hearing considered this ordinance for adoption during its regular meeting on August 21, 2015; **NOW, THEREFORE**,

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

Section 1. Section 18.66.020 of the Black Diamond Municipal Code is hereby amended to read as follows:

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 18.08 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 20 (twenty) 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.

Section 2. Section 18.66.040 of the Black Diamond Municipal Code is hereby amended to read as follows:

18.66.040. 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 period of time established in the development agreement, which shall not exceed 20 years, 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 3. 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 4. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 5. Effective Date. This Ordinance shall be effective five days after publication as provided by law.

PASSED by the Council and approved by the Mayor of the City of Black Diamond, this 5th day of February, 2015.

CITY OF BLACK DIAMOND



Mayor Carol Benson

ATTEST/AUTHENTICATED:



Brenda L. Martinez, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Carol A. Morris, City Attorney

PUBLISHED: 02/10/15
EFFECTIVE DATE: 02/15/15