

**CITY OF SNOHOMISH
Snohomish, Washington**

ORDINANCE 2330

AN ORDINANCE OF THE CITY OF SNOHOMISH, WASHINGTON, AMENDING THE CITY'S LAND USE DEVELOPMENT CODE BY REPEALING SMC SECTION 14.35.030 – DETERMINATION OF COMPLETENESS; REPEALING SMC SECTION 14.55.012 – VESTING; AMENDING SMC SECTION 14.40.030 – DETERMINATION OF COMPLETENESS AND NOTICE OF APPLICATION; AMENDING SMC SECTION 14.45.030 - DETERMINATION OF COMPLETENESS AND NOTICE OF APPLICATION; AMENDING SMC SECTION 14.50.030 - DETERMINATION OF COMPLETENESS AND NOTICE OF APPLICATION; ADOPTING A NEW SMC SECTION 14.55.025 – DETERMINATION OF COMPLETENESS; ADOPTING A NEW SMC SECTION 14.55.028 – VESTING OF NEW APPLICATIONS; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE

WHEREAS, the City has the authority under RCW Title 35A to adopt regulations related to development and project permit processing and vesting; and

WHEREAS, the City has adopted a Land Use Development Code as Title 14 of the Snohomish Municipal Code (“Development Code”) to implement the Comprehensive Plan and to ensure compatible and rational land development and land use in all portions of the City; and

WHEREAS, Sections 14.35.030, 14.40.030, 14.45.030, 14.50.030 SMC established procedures for determining when applications are complete; and

WHEREAS, the determination of when land use applications are complete is an important step in establishing vesting rights so the regulations for determining an application’s completeness need to be detailed and precise in order to protect property rights and such is not the case in the existing language in Sections 14.35.030, 14.40.030, 14.45.030, 14.50.030 SMC; and

WHEREAS, SMC 14.55.012 establishes rules for vesting of land use development applications; and

WHEREAS, the language in SMC 14.55.012 is out of date due to recent court decisions and requires updating; and

WHEREAS, the City Council desires the city’s vesting regulations to be updated to be consistent with case law and desires the regulations for determining the completeness of applications to be centralized and more detailed and precise to be easier to locate and to be more effective; and

WHEREAS, the intent to repeal Sections 14.35.030 and 14.55.012 SMC; to amend Sections 14.40.030, 14.45.030, and 14.50.030; and to adopt new sections 14.55.025 and

14.55.028 was noticed in accordance with City of Snohomish procedures and regulations as provided for in SMC 14.15.070 and on April 11, 2017 a 60-day notice was sent to the Washington State Department of Commerce as required by RCW 36.70A.106, and

WHEREAS, the proposed amendments to the City's Development Code were publicly noticed and circulated for review and comment in accordance with the City's normal review and permitting procedures on May 3, 2017; and

WHEREAS, pursuant to the State Environmental Policy Act, the City of Snohomish was designated as the lead agency for review of the proposed amendment. A Determination of Non-Significance was issued pursuant to WAC 197-11-355 on May 3, 2017. No appeal of the determination was received so the determination stands; and

WHEREAS, on March 1, 2017, the Planning Commission conducted a work session which was open to the public to discuss the proposed amendments; and

WHEREAS, on May 2, 2017, the City Council was briefed on the proposed amendment at a meeting which was open to the public; and

WHEREAS, on May 3, 2017, a public hearing on the proposed amendments set forth herein was held before the Planning Commission and all persons wishing to be heard were heard; and

WHEREAS, following the public hearing and pursuant to SMC 14.15.090, the Planning Commission made written findings and issued a recommendation to the City Council to approve the proposed amendments as set forth herein, finding the proposed amendments are internally consistent with the City of Comprehensive Plan, the Growth Management Act, and the State Environmental Policy Act, and are in the interest of the public health, safety, and welfare of Snohomish residents; and

WHEREAS, on July 18, 2017, a public hearing on the proposed amendments was held by the City Council, and all persons wishing to be heard were heard; and

WHEREAS, the City Council found the proposed amendments to be consistent with the City of Snohomish Comprehensive Plan, the Washington State Growth Management Act and State Environmental Policy Act, and is in the interest of the public health, safety, and welfare of Snohomish residents.

NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF SNOHOMISH, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. **SMC 14.35.030 – Determination of Completeness Repealed.** SMC 14.35.030 is hereby repealed.

Section 2. **SMC 14.55.012 – Vesting Repealed.** SMC 14.55.012 is hereby repealed.

Section 3. **SMC 14.40.030 – Determination of Completeness and Notice of Application Amended.** SMC 14.40.030 is hereby amended and shall read as follows:

14.40.030 Notice of Application

Within 14 days of determination of completeness of an application, the Director or designee shall cause a notice of application to be published in accordance with SMC 14.55.040. The public comment period for the notice of application shall be a minimum of 14 days.

Section 4. SMC 14.45.030 – Determination of Completeness and Notice of Application Amended.

SMC 14.45.030 is hereby amended to read as follows:

14.45.030 Notice of Application

Within 14 days of determination of completeness of an application, the Director or designee shall cause a notice of application to be published in accordance with SMC 14.55.040. The public comment period for the notice of application shall be a minimum of 14 days.

Section 5. SMC 14.50.030 – Determination of Completeness and Notice of Application Amended.

SMC 14.50.030 is hereby amended to read as follows:

14.50.030 Notice of Application

Within 14 days of determination of completeness of an application, the Director or designee shall cause a notice of application to be published in accordance with SMC 14.55.040. The public comment period for the notice of application shall be a minimum of 14 days.

Section 6. SMC 14.55.025 – Determination of Completeness A new SMC Section 14.55.025 entitled “Determination of Completeness” is hereby adopted and shall read as set forth in Exhibit “1” attached to this ordinance and incorporated herein as if set forth in full.

Section 7. SMC 14.55.028 Vesting of Applications A new SMC Section 14.55.028 entitled “Vesting of Applications” is hereby adopted and shall read as set forth in Exhibit “2” attached to this ordinance and incorporated herein as if set forth in full.

Section 8. Findings, Conclusions, and Analysis. In support of the amendments approved in this ordinance, the Snohomish City Council adopts the findings, conclusions, and analysis contained in the Planning Commission’s Findings of Fact and Conclusions, attached hereto as Exhibit “3” and incorporated herein by reference except the revisions contained herein.

Section 9. Severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the

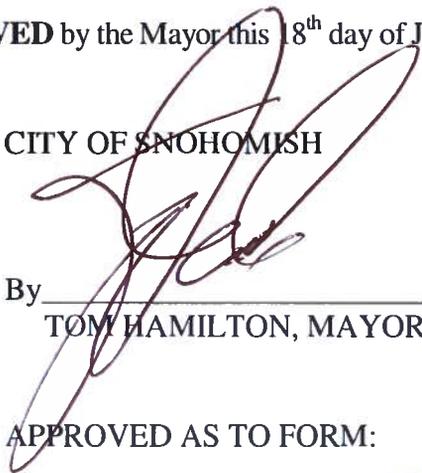
validity or constitutionality of any other section, subsection, sentence, clause, phrase, or word of this ordinance.

Section 10. Authority to make necessary corrections. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance and attachments including, but not limited to, the correction of scrivener's clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 11. Effective Date. This ordinance shall be effective five days after adoption and publication by summary.

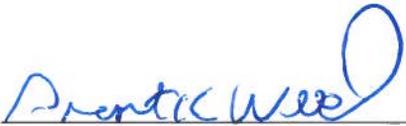
ADOPTED by the City Council and **APPROVED** by the Mayor this 18th day of July, 2017.

CITY OF SNOHOMISH

By 
TOM HAMILTON, MAYOR

ATTEST:

By 
Pat Adams, CITY CLERK

APPROVED AS TO FORM:
By 
GRANT K. WEED, CITY ATTORNEY

Date of Publication: 7-22-17

Effective Date (5 days after publication): 7-27-17

EXHIBIT 1

SMC 14.55.025 Determination of Completeness

A. Completeness determination.

1. Determination of Completeness. The Department shall determine in writing whether a project permit application is complete or incomplete within 28 days after receiving an application. The written determination shall be mailed, faxed, e-mailed, or delivered to the applicant or the applicant's representative within the required time period. The determination shall state:
 - a. That the application is complete; or
 - b. That the application is incomplete and include a statement as to necessary actions to make the application complete.
 - i. If the applicant does not submit the required information within 90 days after receiving the determination that their application was incomplete, the application shall automatically lapse for failure to submit the necessary information in a timely manner and close the permit application file.
 - ii. Upon written request by the applicant prior to expiration of the initial 90 days, the Director may grant a time extension to submit the required information, not to exceed an additional 90 days.
 - iii. When applications lapse for failure to submit the required information within the necessary time period, or when the applicant requests their application be withdrawn, the applicant may request a refund of the unused portion of the application fee by submitting a written request to the Director. If a Notice of Application has been issued then no refunds shall be issued. Refunds shall be processed in accordance with the city's normal refund practices.
2. Resubmittals. If the Department determines an application is incomplete and the applicant submits additional documents identified by the Department as necessary for a complete application, the Department shall notify the applicant within 14 days of the submittal that the application is complete or what additional information is necessary to make the application complete.
3. Department's Failure to Provide a Determination of Completeness. If the Department has not issued a determination of completeness as described above within 28 days after receiving an application, or within 28 days after receiving additional information in response to the necessary actions required to make the application complete, as described above in 14.55.025(A)(1)(b), the application shall be deemed complete.
4. Identification of Other Agencies with Jurisdiction. A written determination of completeness shall, to the extent known by the department, identify other local, state, or federal agencies with jurisdiction concerning the application and permits requested. The department may include other information or conditions in the Determination of Completeness.

B. Submittal requirements.

1. Submittal Criteria. A land use permit application is complete for the purposes of this section when it meets the submittal requirements established by the Department. Required submittals shall meet the following minimum criteria:
 - a. Applications and related submittals shall contain at least the minimum amount of information necessary to allow for review of the project to progress even though additional information may be required or project modifications may be undertaken subsequent to the initial project review; and
 - b. Applications and related submittals shall be in comprehensible, legible, and in a format typical for the information being provided.
 - c. Applications and related submittals shall meet minimum code requirements for the type of application applied for.
2. Change in Submittal Requirements. The Department shall establish and may revise written submittal requirements for each type of land use, project, or other development permit or approval type. The requirements shall be made available to the public in a checklist or other form that clearly describes the material and number of copies that must be submitted for an application to be considered complete. The Department shall provide public notice of any changes to the submittal requirements at least 30 days prior to their effective date.
3. Waiver of Submittal Requirements. Submittal requirements shall not be waived, except that the Department may determine in writing that a particular requirement is not applicable upon a clear showing by the applicant that the requirement is not relevant to the proposed action and is not necessary to demonstrate compliance with applicable requirements and city codes.
4. Additional Information. Even after a determination of completeness, the Department may require the submittal of additional information or studies as it determines necessary for review of the application. The submittal of additional information or studies shall not affect the validity of the vesting of the application pursuant to SMC 14.55.028, unless the information is requested because incorrect or false information was submitted by the applicant and if the incorrect information would materially affect the final decision on the application.

EXHIBIT 2

SMC 14.55.028 Vesting of Applications

- A. Purpose: The purpose of this section is to implement local vesting regulations that are best suited to the needs of the city and consistent with state law. This section is intended to provide property owners, permit applicants, and the general public assurance that the development regulations for project development will remain consistent during the life of an application.
- B. Vesting: An application for a land use, project, or other development permit or approval type which vests shall be considered under the development regulations in effect on the date the application is determined to be fully complete pursuant to SMC 14.55.025. Once an application is approved and a permit is issued the project is vested to the regulations under which the application was reviewed.
- C. Applications which Vest: The following applications for a permit or approval types as set forth in Titles 14 and 19 SMC shall vest to the development regulations in effect at the time the application is determined to be complete pursuant to SMC 14.55.025:
1. Administrative Development Plan
 2. Binding Site Plan
 3. Boundary Line Adjustment
 4. Building Permit
 5. Conditional Use Permit
 6. Development Agreement
 7. Fence Permit
 8. Flood Hazard Area Development Permit, subject to the requirements of the National Flood Insurance Program where applicable
 9. Recorded Development Plan
 10. Retaining Wall Permit
 11. Shoreline
 - a. Conditional Use Permit
 - b. Substantial Development Permit
 - c. Variance
 12. Site Civil Permit
 13. Subdivisions
 - a. Preliminary Fee Simple Unit Lot Subdivision
 - b. Preliminary Subdivision (Preliminary Plat)
 - c. Preliminary Short Subdivision (Preliminary Short Plat)
 - d. Planned Residential Development
 14. Sign Permit
 15. Sidewalk Use Permit
 16. Variance
 - a. Minor
 - b. Major

- D. Subsequent Applications. Development permit applications related to the development identified in subsection C above that are submitted after the initial application, shall vest to the development regulations in effect at the time the initial application for development identified in subsection C above was determined to be complete pursuant to SMC 14.55.025. However, any subsequent permit application must be determined to be complete pursuant to SMC 14.55.025 prior to the expiration date of the initial permit(s) or approval(s) issued for the application types listed in Subsection C above.
- E. Exceptions: The provisions of this section shall not be applicable to applications for the following permit or approval types, including when the application is a subsequent application to an initial application that has vested. However, if vesting is provided elsewhere in this code or in state and federal regulations, they may be applicable.
1. All permit or approval types set forth in Title 15 SMC;
 2. All permit or approval types set forth in Title 20 SMC;
 3. Wireless Telecommunication Facilities permits as set forth in SMC 14.242;
 4. Comprehensive Plan Amendments as set forth in Title 14 SMC;
 5. Rezones as set forth in Title 14 SMC; and
 6. Temporary Permits as set forth in SMC 14.60.
- F. For the purpose of this section, "development regulation" means those provisions of Snohomish Municipal Code that exercise a restraining or directing influence over land, including provisions that control or affect the type, degree, or physical attributes of land development or use but shall not include:
1. Permit processing fees and taxes or administrative fees;
 2. Procedural rules and regulations; and
 3. Regulations that specify or are based upon adopted SEPA policies for the exercise of SEPA substantive authority, including the SEPA ordinance;
- G. A complete building permit application shall always be subject to that version of Title 19 SMC in effect at the time the building permit application is submitted.
- H. Notwithstanding any other provision in this section, any application dependent on approval of a rezone, Comprehensive Plan amendment, variance, or conditional use application shall not vest until the underlying rezone, Comprehensive Plan amendment, variance, or conditional use application is approved.
- I. Review of a project proposal during a pre-application process and/or conference does not vest the application.
- J. Stormwater regulations cannot be vested through the provisions of this section.
- K. Fees, including but not limited to, environmental impact mitigation fees, permit processing fees, latecomer agreement fees, and taxes or administrative fees cannot be vested through the provisions of this section.
- L. All vested rights associated with a permit application or permit are lost when that application or permit expires as provided for in SMC 14.55.100.

EXHIBIT 3

Snohomish Planning Commission Findings of Fact and Conclusions

Based on the review of the proposed changes to complete applications and vesting regulations, the Planning Commission of the City of Snohomish makes the following Findings of Fact:

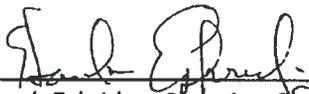
1. The vesting regulations described in Snohomish Municipal Code 14.55.012 are out of date and need to be updated primarily because the regulations make applications subject to the Vested Rights Doctrine, which recent court decisions have determined to be an invalid way of establishing vested rights.
2. The regulations establishing the process for determining when development applications are complete are located in four separate sections of Snohomish Municipal Code and do not provide enough detail regarding required submittal items which makes the process subject to abuse in order to establish vesting rights.
3. Pursuant to RCW 36.70A.106 the State of Washington Department of Commerce was notified on April 11, 2017 of the City's intent to amend its regulations related to vesting and determination of application completeness. An acknowledgment letter from the Department of Commerce stating the procedural requirement was met was received on April 11, 2017.
4. The Planning Commission discussed the proposed code amendments at their March 1, 2017 meeting.
5. The City Council discussed the proposed code amendments at their May 2, 2017 meeting.
6. The Planning Commission held a public hearing on the proposed code amendments on May 3, 2017.
7. At the conclusion of the public hearing on May 3, 2017, the Planning Commission voted to recommend City Council approval of the proposed amendments.
8. The proposed amendments will amend Snohomish Municipal Code vesting regulations.
9. The proposed amendments will amend Snohomish Municipal Code regulations regarding the determination of completeness of development permit applications.

Based on the foregoing Findings of Fact, the Snohomish Planning Commission hereby makes the following conclusions:

1. The proposed amendments update the regulations for establishing vesting rights to be consistent with current case law.
2. The proposed amendments consolidate regulations for determining the completeness of development permit applications into one section that will make understanding and administering the regulations easier.

3. The proposed amendments for determining the completeness of development permit applications provide safeguards to ensure insufficient applications do not gain vesting rights.
4. The proposed amendments are consistent with Washington State law.
5. The proposed amendments implement and are consistent with the goals and policies of the City of Snohomish Comprehensive Plan.
6. The proposed amendments protect the public health, safety, and general welfare.
7. The proposed amendments do not result in an unconstitutional taking of private property for a public purpose and they do not violate substantive due process guarantees.

Date: May 3, 2017

By: 
Hank Eskridge, Planning Commission Chair