

## VESTED RIGHTS

**Background:** The Washington vested rights doctrine provides a date certain on which a property owner's right to develop his/her property vests. *West Main Associates v. Bellevue*, 106 Wn.2d 47, 720 P.2d 782 (1986); for building permits, RCW 19.27.095; for preliminary plats, RCW 58.17.033.

**What is the vested rights doctrine?** Under the doctrine, when a developer submits a complete application for a permit (*see the type of permit below*) the local government cannot frustrate the development by enacting new regulations. *West Main*.

**If the permit is "vested," does this mean that the developer is guaranteed the right to build?** No. A vested right merely establishes the ordinances to which the permit and subsequent development must comply. *West Main, see also, HJS Development v. Pierce County*, 61 P.3d 1141 (2003).

**When is a permit "vested?"** For those types of permits subject to the doctrine, an applicant must submit an application for a permit that (1) complies with the existing zoning/building code; (2) is filed during the effective period of the ordinance under which the applicant seeks to develop; and (3) is sufficiently complete. *West Main*, RCW 19.27.095; RCW 58.17.033.

**Which permits are subject to the doctrine?** Local jurisdictions can adopt codes allowing permits to vest. *Erickson v. McLerran*, 123 Wn.2d 864, 872 P.2d 1090 (1994). In addition, the following are examples of permits that vest under statute and case law: (1) building permits – RCW 19.27.095; (2) preliminary and short plats – RCW 58.17.033; (3) shoreline substantial development permits – *Talbot v. Gray*, 11 Wn. App. 807, 811, 525 P.2d 801 (1974); (4) conditional use permits – *Beach v. Board of Adjustment*, 73 Wn.2d 343, 438 P.2d 617 (1968).

**Which applications do not vest?** Impact fees do not vest. *New Castle Investments v. La Center*, 98 Wn. App. 224, 989 P.2d 569 (1999). The applications that are not specifically subject to vesting as provided in the City's codes do not vest.

**If two permit applications are submitted at the same time for the same property but only one permit is subject to the doctrine, how are the applications processed?** If the two applications are inextricably linked, and one application cannot go forward without the other, the local jurisdiction should process both as vested. *Schneider Homes v. Kent*, 87 Wn. App. 774, 779, 942 P.2d 1096 (1997).

**VESTING, cont.**

**Which ordinances is the application vested to?** What is vested is what is shown on the application. *Noble Manor v. Pierce County*, 133 Wn.2d 269, 943 P.2d 1378 (1997).

**Can vested rights be extended for a multi-phase project?** If an application for a permit that vests is approved by the local jurisdiction, the vested rights available to the original application may be extended to phases of the project through a development agreement. RCW 36.70B.170(3)(i). The development agreement must be consistent with the city's applicable development regulations.

**Can vesting be delayed by requiring that property owners obtain other approvals prior to submitting an application for a permit (subject to the doctrine)?** No. Ordinances which deny a developer to vest rights until a permit or series of permits issue are unduly oppressive and unconstitutional. *West Main*.

**Exceptions to doctrine:** A vested right may be affected or extinguished by a subsequently adopted ordinance enacted pursuant to the local jurisdiction's police power, in furtherance of public health or safety. *Hass v. Kirkland*, 78 Wn.2d 929, 481 P.2d 481 (1971).

*Chapter 18.160*

*VESTING*

**Sections:**

- 18.160.010 Definitions.**
- 18.160.020 Purpose.**
- 18.160.030 Applicability.**
- 18.160.050 Vesting of Applications.**
- 18.160.060 Duration of Approvals.**
- 18.160.070 Modification.**
- 18.160.080 Expiration of Applications.**
- 18.160.090 Waiver of Vesting.**

**18.160.010 Definitions.**

For purposes of this Chapter, the following definitions shall apply:

- A. "Complete Application" means an application submitted to the County pursuant to Title 18 that contain all of the information described in Section 18.40.020.
- B. "Development Regulations," also referred to as "Land Use Controls", means the following controls placed on development or land use activities by the County, including but not limited to, comprehensive plan policies, zoning regulations, subdivision regulations, shoreline management regulations, road design standards, site development regulations (other than stormwater standards and erosion/sediment control requirements), forest practice regulations, sign regulations, critical areas and resource lands regulations, and Hearing Examiner conditions and all development regulations and land use controls that must be satisfied as a prerequisite to obtaining approval. For purposes of this Title, construction and utility regulations such as stormwater standards and erosion/sediment control requirements contained in the Site Development Regulations, building standards, fire standards, sewer utility standards, and Health Department standards are not considered development regulations or land use controls.
- C. "Vesting" means the establishment of a date that is used to determine which development regulations the Department and Hearing Examiner will apply to the review of a complete application or approved development permit.

(Ord. 98-66S § 1 (part), 1999)

**18.160.020 Purpose.**

The purpose of this Chapter is to implement plan policies and state laws that provide for vesting. This Chapter is intended to provide property owners, permit applicants, and the general public assurance that regulations for project development will remain consistent during the lifetime of the application. The Chapter also establishes time limitations on vesting for permit approvals and clarifies that once those time limitations expire, all current development regulations and current land use controls apply. (Ord. 98-66S § 1 (part), 1999)

**18.160.030 Applicability.**

This Chapter applies to complete applications and permit approvals required by Pierce County pursuant to Title 18, including and limited to, use permits, preliminary plats, final plats, short plats, large lot divisions, binding site plans, shoreline development permits and any other land use permit application that is determined by the Washington State legislature to be subject to the Vested Rights Doctrine. Vesting of building permit applications are governed by the rules of RCW 19.27.095 and Title 15 PCC. (Ord. 98-66S § 1 (part), 1999)

**18.160.050 Vesting of Applications.**

- A. An application described in Section 18.160.030 shall be reviewed for consistency with the applicable development regulations in effect on the date the application is deemed complete.
- B. An application described in Section 18.160.030 shall be reviewed for consistency with the construction and utility standards in effect on the date the separate application for a construction or utility permit is deemed complete. An applicant may submit a separate construction or utility permit application simultaneously with any application described in Section 18.160.030 to vest for a construction or utility standard. A site development application for stormwater design and construction may vest on the date of preliminary plat or use permit application if the applicant submits the stormwater site development application within 180 days of completed preliminary plat or use permit application and adheres to the process outlined in 18.40.010 D.
- C. An application described in Section 18.160.030 utilizing vested rights shall be subject to all development regulations in effect on the vesting date.
- D. An application described in Section 18.160.030 that is deemed complete is vested for the specific use, density, and physical development that is identified in the application submittal.
- E. Applications submitted pursuant to Title 18 that are not listed in Section 18.160.030 shall be governed by those standards which apply to said application. These applications shall not vest for any additional development regulations.
- F. The property owner is responsible for monitoring the time limitations and review deadlines for the application. The County shall not be responsible for maintaining a valid application. If the application expires, a new application may be filed with the Department, but shall be subject to the development regulations in effect on the date of the new application.

(Ord. 98-66S § 1 (part), 1999)

**18.160.060 Duration of Approvals.**

- A. **Use Permits.** An approved use permit shall be allowed to develop for a period of one year from the effective date of the permit approval unless a different time limitation was specifically authorized in the final approval. The development of an approved use permit shall be governed by the terms of approval of the permit unless the legislative body finds that a change in conditions creates a serious threat to the public health, safety or welfare.
- B. **Preliminary Plat.** Development of an approved preliminary plat shall be based on the controls contained in the Hearing Examiner's decision. A final plat meeting all of the requirements of the preliminary plat approval shall be submitted within five years of the effective date of the Hearing Examiner's decision. Any extension of time beyond this five year limitation may contain additional or altered conditions and requirements based on current development regulations and other land use controls.

- C. **Use Permits Associated with a Preliminary Plat.** Use Permit applications, such as Planned Development District applications, that are approved as a companion to a preliminary plat application, shall remain valid for the duration of the preliminary and final plat as provided in subsections B. and D.
  - D. **Final Plat.** The lots in a final plat may be developed by the terms of approval of the final plat, and the development regulations in effect at the time the preliminary plat application was deemed complete for a period of five years from the recording date unless the legislative body finds that a change in conditions creates a serious threat to the public health, safety or welfare.
  - E. **Short Plat, Large Lot Division.** The lots in a short plat or large lot division may be developed by the terms and conditions of approval, and the development regulations in effect at the time the application was deemed complete for a period of five years from the recording date unless the legislative body finds that a change in conditions creates a serious threat to the public health, safety or welfare.
  - F. **Binding Site Plan.** The lots in a Binding Site Plan may be developed by the terms of approval of the Binding Site Plan, and the development regulations in effect at the time the application was deemed complete for a period of five years from the recording date unless the legislative body finds that a change in conditions creates a serious threat to the public health, safety or welfare.
  - G. All approvals described in this Section shall be vested for the specific use, density, and physical development that is identified in the permit approval.
- (Ord. 98-66S § 1 (part), 1999)

**18.160.070 Modification.**

Proposed modifications to an application which has been deemed to be complete by the Department shall be treated as follows:

- A. Modifications proposed by the Department to an application shall not be considered a new application.
- B. Any modification to an application may require revised public notice and/or additional review fees.
- C. Modifications proposed by the applicant to a pending application which meet or exceed any of the criteria in Sections C.1- C.7 as determined by the Department, are deemed to result in a substantial increase in a project's impacts and shall require a new application. The new application shall conform to the development regulations which are in effect at the time the new application is submitted. The Department shall apply the following criteria to determine if a substantial modification is proposed:
  1. the perimeter boundaries of the original site are extended by more than 5 percent of the original lot area;
  2. the modification adds more than 25 percent gross square footage to proposed structures on the site;
  3. the modification increases the overall impervious surface on the site by more than 25 percent;
  4. the modification increases the overall residential density of a site by more than 20 percent;
  5. the modification reduces designated open space by more than 10 percent;
  6. the modification increases or substantially relocates points of access unless supported by a revised traffic analysis; or

7. the modification consists of changing the original application's primary use category to a new primary use category of greater intensity, as determined by the new use's impacts, including but not limited to traffic, impervious surface, noise, glare, dust, and hours of operation.
  - D. Proposed modifications to applications that do not exceed the criteria described in C.1. through C.7. shall be reviewed for the development regulations in effect on the date of the original complete application.
- (Ord. 98-66S § 1 (part), 1999)

**18.160.080 Expiration of Applications.**

Any application type described in Section 18.160.030 that was pending on July 28, 1996, that does not contain all submittal items and required studies that are necessary for a public hearing or has not been reviewed by the Hearing Examiner in a public hearing shall become null and void one year after registered notice is mailed to the applicant and property owner. A one time, one year time extension may be granted by the Hearing Examiner after a public hearing if the extension request is submitted within one year of the effective date of this Chapter and applicant has demonstrated due diligence and reasonable reliance towards project completion. In considering due diligence and reasonable reliance the Examiner shall consider the following:

- A. Date of initial application
- B. Time period the applicant had to submit required studies
- C. Availability of necessary information
- D. Potential to provide necessary information within one year
- E. Applicant's rationale or purpose for delay
- F. Applicant's ability to show reliance together with an expectation that the application would not expire.

(Ord. 98-66S § 1 (part), 1999)

**18.160.090 Waiver of Vesting**

A property owner may voluntarily waive vested rights at any time during the processing of an application by delivering a written and signed waiver to the Director stating that the property owner agrees to comply with all development regulations in effect on the date of delivery of the waiver. Any change to the application is subject to the modification criteria described in Section 18.160.070 and may require revised public notice and/or additional review fees. (Ord. 98-66S § 1 (part), 1999)