

**ORDINANCE NO. 3992**

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, ADOPTING AN INTERIM ZONING ORDINANCE TO AMEND TITLE 20 OF THE EDMONDS COMMUNITY DEVELOPMENT CODE, BY ADDING A NEW SECTION RELATING TO DEEMED WITHDRAWAL IN THE CASE OF IRRECONCILABLE DEVELOPMENT APPLICATIONS, RECODIFYING THE SECTION RELATED TO RESUBMITTAL OF DEVELOPMENT APPLICATIONS AFTER DENIAL, DECLARING AN EMERGENCY NECESSITATING IMMEDIATE ADOPTION AND EFFECTIVENESS OF THIS INTERIM ZONING ORDINANCE.

---

WHEREAS, the Washington courts have stated that land use applications are subject to the legal doctrine of res judicata which affords every party one, but not more than one, fair adjudication of his or her application, Lejeune v. Clallam County, 64 Wn. App. 257, 266, 823 P.2d 1144, 1149 (1992); and

WHEREAS, it would not be in the public interest for the city staff to process multiple irreconcilable applications to develop the same property when it would be physically possible to construct only one such development; and

WHEREAS, the Edmonds Community Development Code has been silent on the legal effect of filing multiple irreconcilable applications to develop the same property; and

WHEREAS, in fairness to both the city and future applicants, the city council would like to clarify the legal effect of filing a subsequent irreconcilable application for development before such applications are filed; and

WHEREAS, the city has learned that it may be received such an application in the near future; and

WHEREAS, adopting this interim ordinance on an emergency basis will ensure that the legal effect of filing such an application will be known by the applicant prior to filing so that the applicant can elect to file or not file with an understanding of the consequence; and

WHEREAS, the City of Edmonds may adopt an interim zoning ordinance for a period of up to six months pursuant to RCW 36.70A.390, provided that the City Council holds a public hearing on the interim ordinance within sixty days of adoption;

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF EDMONDS, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. A new Section 20.02.004 of the Edmonds Community Development Code, entitled “Effect of irreconcilable applications on the same property,” is hereby amended to read as follows:

**ECDC 20.02.004. Effect of irreconcilable applications on the same property.**

A. If an applicant submits an application that cannot be reconciled with a previously submitted application on the same property, the previously submitted application shall be deemed withdrawn by the applicant and it shall be rendered null and void. The director shall notify the applicant that the previously submitted application has been deemed withdrawn and will not be processed any further. Withdrawal shall be deemed to occur even when the city has finished processing the previously submitted application.

B. Many inconsistencies between applications can be reconciled through corrections that are made during the development review process. This section is not intended to treat all inconsistencies as effecting a withdrawal of the earlier application.

C. Without limiting the generality of subsection A, above, the following examples are intended to illustrate whether a subsequent application shall be deemed irreconcilable with an earlier application.

1. *Examples of irreconcilable applications that result in withdrawal.*

- a. Applicant submits an application for a four-lot short plat on a particular property. Subsequently, another application is submitted for a three-lot short plat on the same property. Assuming there is not enough land area for seven

lots, the two applications are irreconcilable because one could not construct both short plats. Hence, the four-lot short plat is deemed withdrawn.

- b. Applicant submits a design review application for a twenty-unit multi-family housing development. Subsequently, another design review application is submitted for a thirty-unit multi-family housing development whose footprint would substantially overlap with the footprint of the structure shown for the twenty-unit application. Because both structures would occupy substantially the same space they are irreconcilable and the twenty-unit application would be deemed withdrawn.

2. *Examples of applications that may be inconsistent but are not irreconcilable resulting in withdrawal.*

- a. Applicant submits an application for a four-lot short plat on a particular property. Subsequently, a building permit application is submitted for a single-family home the footprint of which would encroach into the setbacks as measured from the proposed short plat lot lines. Because the building permit application could be corrected to properly locate the footprint, the applications are reconcilable and do not effect a withdrawal of the short plat application.
- b. Applicant submits a landscaping plan that is inconsistent in an insignificant way with civil site-improvement plans that are submitted for the same property. If the two sets of plans can be reconciled by submitting a corrected version of at least one of the two plans, then city staff would seek corrections and withdrawal would not be deemed to occur.

Section 2. Section 20.07.007 of the Edmonds Community Development Code, entitled “Resubmission of application,” is hereby recodified as Section 20.02.006 to read as follows (new text is shown in underline; deleted text is shown in ~~strike-through~~):

**ECDC 20.02.006. Resubmission of application after denial.**

Any permit application or other request for approval submitted pursuant to this title that is denied shall not be resubmitted or accepted by the director for review for a period of twelve

months from the date of the last action by the city on the application or request unless, in the opinion of the director, there has been a significant change in the application or a significant change in conditions related to the impacts of the proposed project.

Section 3. Sunset. This ordinance shall remain in effect for 180 days from the effective date, after which point it shall have no further effect.

Section 4. Emergency Declaration. 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 adoption of this interim zoning ordinance, new development applications could be filed that could create ambiguity with respect to the status of previously filed applications on the same property. Therefore, this interim regulation must be imposed as an emergency measure to protect the public health, safety and welfare by ensuring that the status of such previously filed applications is addressed herein.

Section 5. Severability. If any section, subsection, clause, sentence, or phrase of this ordinance should be held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 6. Effective Date. This Ordinance shall take effect and be in full force and effect immediately upon passage, as set forth in Section 4, 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.

APPROVED:

  
MAYOR DAVE EARLING

ATTEST/AUTHENTICATED:

  
CITY CLERK, SCOTT PASSEY

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY:

BY   
JEFF TARADAY

FILED WITH THE CITY CLERK:	03/17/2015:
PASSED BY THE CITY COUNCIL:	03/17/2015
PUBLISHED:	03/22/2015
EFFECTIVE DATE:	03/17/2015
ORDINANCE NO. 3992	

**SUMMARY OF ORDINANCE NO. 3992**

of the City of Edmonds, Washington

---

On the 17th day of March, 2015, the City Council of the City of Edmonds, passed Ordinance No. 3992. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, ADOPTING AN INTERIM ZONING ORDINANCE TO AMEND TITLE 20 OF THE EDMONDS COMMUNITY DEVELOPMENT CODE, BY ADDING A NEW SECTION RELATING TO DEEMED WITHDRAWAL IN THE CASE OF IRRECONCILABLE DEVELOPMENT APPLICATIONS, RECODIFYING THE SECTION RELATED TO RESUBMITTAL OF DEVELOPMENT APPLICATIONS AFTER DENIAL, DECLARING AN EMERGENCY NECESSITATING IMMEDIATE ADOPTION AND EFFECTIVENESS OF THIS INTERIM ZONING ORDINANCE.

The full text of this Ordinance will be mailed upon request.

DATED this 18th day of March, 2015.

  
CITY CLERK, SCOTT PASSEY

RECEIVED

MAR 27 2015

EDMONDS CITY CLERK

Everett Daily Herald

Affidavit of Publication

State of Washington }
County of Snohomish } ss

Wayne being first duly sworn, upon oath deposes and says: that he/she is the legal representative of the Everett Daily Herald a daily newspaper. The said newspaper is a legal newspaper by order of the superior court in the county in which it is published and is now and has been for more than six months prior to the date of the first publication of the Notice hereinafter referred to, published in the English language continually as a daily newspaper in Snohomish County, Washington and is and always has been printed in whole or part in the Everett Daily Herald and is of general circulation in said County, and is a legal newspaper, in accordance with the Chapter 99 of the Laws of 1921, as amended by Chapter 213, Laws of 1941, and approved as a legal newspaper by order of the Superior Court of Snohomish County, State of Washington, by order dated June 16, 1941, and that the annexed is a true copy of EDH622176 ORDINANCE 3992 as it was published in the regular and entire issue of said paper and not as a supplement form thereof for a period of 1 issue(s), such publication commencing on 03/22/2015 and ending on 03/22/2015 and that said newspaper was regularly distributed to its subscribers during all of said period.

The amount of the fee for such publication is \$99.00.

Kathleen Landis

Subscribed and sworn before me on this 24 day of March, 2015.

Debra Ann Grigg

DEBRA ANN GRIGG
Notary Public
State of Washington
My Commission Expires
October 31, 2017

Notary Public in and for the State of Washington.
City of Edmonds - LEGAL ADS | 14101416
LINDA HYND

SUMMARY OF ORDINANCE NO. 3992  
of the City of Edmonds, Washington

On the 17th day of March, 2015, the City Council of the City of Edmonds, passed Ordinance No. 3992. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, ADOPTING AN INTERIM ZONING ORDINANCE TO AMEND TITLE 20 OF THE EDMONDS COMMUNITY DEVELOPMENT CODE, BY ADDING A NEW SECTION RELATING TO DEEMED WITHDRAWAL IN THE CASE OF IRRECONCILABLE DEVELOPMENT APPLICATIONS, RECODIFYING THE SECTION RELATED TO RESUBMITTAL OF DEVELOPMENT APPLICATIONS AFTER DENIAL, DECLARING AN EMERGENCY NECESSITATING IMMEDIATE ADOPTION AND EFFECTIVENESS OF THIS INTERIM ZONING ORDINANCE.

The full text of this Ordinance will be mailed upon request.  
DATED this 18th day of March, 2015.

CITY CLERK, SCOTT PASSEY  
EDH622176

Published: March 22, 2015.