



CITY OF KIRKLAND
Planning and Community Development Department
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MEMORANDUM

To: Kurt Triplett, City Manager

From: Eric Shields, Planning Director
Nancy Cox, Development Review Manager

Date: October 18, 2011

Subject: FOURTH RENEWAL OF AN INTERIM ORDINANCE TO EXTEND LAND USE PERMIT APPROVALS DURING THE ECONOMIC DOWNTURN

RECOMMENDATION

Staff recommends that the City Council:

- Hold a public hearing;
- Adopt the proposed ordinance to renew for an additional six months the Interim Ordinance that extends approval periods for land use permits; and
- Provide guidance on how to approach future extensions of the Interim Ordinance.

BACKGROUND DISCUSSION

The original request for additional time for permits came early in 2009 from the Master Builders Association to address the severe economic hardship due to the local and national economy. The Council passed an ordinance extending the timeframes for building and grading permits at that time.

The idea of land use permit extensions came up during a City Council meeting in September, 2009 and subsequently was brought to the Economic Development Committee. After reviewing information about what other jurisdictions are doing, the Economic Development Committee directed staff to take a land use permit extension ordinance to the full Council for consideration. Interim Ordinance No. 4219 was prepared and approved in December, 2009 and renewed in June, 2010 and November, 2010. In May, 2011, the Council renewed and modified Ordinance No. 4219 to allow an applicant to request no more than two extensions. Ordinance No. 4300 (Attachment 1) contains the complete text of Ordinance No. 4219 and the additional language to allow no more than two extensions.

Interim ordinances must be renewed every six months to remain in effect. The fourth renewal of an interim ordinance pertaining to the following regulations is the subject of the public hearing on Council's November 1, 2011 agenda. The proposed ordinance would renew Ordinance No. 4300 through May 1, 2012. Following is a summary of Ordinance No. 4300:

- Zoning Permits

Ordinance No. 4300 extended the time limits established in development codes to allow a permit applicant an additional year to: 1) start construction or submit a complete building permit, or 2) complete construction. The ordinance does not allow an applicant to extend both periods. It does not apply to permits that have expired. It allows applicants to request no more than two extensions. The authorization may apply to certain pending land use permits or approvals for one year from the scheduled expiration date for land use permits. Existing Zoning Code language follows:

150.135 Lapse of Approval

The applicant must begin construction or submit to the City a complete building permit application for the development activity, use of land or other actions approved under this chapter within four years after the final approval of the City of Kirkland on the matter, or the decision becomes void; provided, however, that in the event judicial review is initiated per KZC [150.130](#), the running of the four years is tolled for any period of time during which a court order in said judicial review proceeding prohibits the required development activity, use of land, or other actions. The applicant must substantially complete construction for the development activity, use of land, or other actions approved under this chapter and complete the applicable conditions listed on the notice of decision within six years after the final approval on the matter, or the decision becomes void. For development activity, use of land, or other actions with phased construction, lapse of approval may be extended when approved under this chapter and made a condition of the notice of decision.

- Subdivision Permits

Ordinance No. 4300 addresses Kirkland Municipal Code provisions related to increasing the time an applicant has to get a plat recorded from 4 years to 6 years. It does not apply to permits that have expired. It allows applicants to request no more than two extensions. Existing Kirkland Municipal Code language follows:

22.20.370 Short plat documents—Recordation—Time limit.

After the short plat documents are signed, they will be transmitted to the city clerk's office for recording with the applicable office in King County. The short plat must be recorded with King County within four years of the date of approval or the decision becomes void; provided, however, that, in the event judicial review is initiated, the running of the four years is tolled for any period of time during which a court order in said judicial review proceeding prohibits the recording of the short plat; and provided further, that an approval which would otherwise become void after July 6, 1994, under a provision which is now being amended by the ordinance codified in this section, shall only become void if it would still do so under all amendments made by Ordinance 3421. (Ord. 3705 § 2 (part), 1999)*

Code reviser's note: Ord. 3421 was repealed by Ord. 3433*.*

A similar provision for formal plats (22.16.130 KMC) is also covered by Ordinance No. 4300.

Use in First Two Years

Two (2) zoning permit and 24 subdivision applicants have taken advantage of the extension opportunity since the program began in 2009.

Future Extensions

As noted above, the proposed ordinance would authorize, for the fifth consecutive six month period, the opportunity to extend the lapse of approval for zoning permits and subdivisions. The ordinance would be effective through May 1, 2012. Given the continued uncertain nature of the economy, staff believes that an additional renewal through October, 2012 should be considered. However, each additional extension vests development under regulations that are increasingly out of date. In addition, the interim ordinances are intended to last for a limited time, so continued renewal is not advisable. Council may decide that the need for an extended period for the lapse of approval is no longer necessary, or may direct that changes to the Zoning Code be made to codify a more generous lapse of approval period. Council direction on how to proceed with future extensions of the ordinance is requested.

Attachments

1 Interim Ordinance No. 4300

cc: File MIS09-00022

ORDINANCE NO. 4300

AN INTERIM ORDINANCE OF THE CITY OF KIRKLAND RELATING TO LAND USE AND ZONING, PROVIDING INTERIM OFFICIAL CONTROLS REGARDING LAND USE PERMIT EXTENSIONS FILE NO. MIS09-00022, MODIFYING AND EXTENDING ORDINANCE NO. 4219 THROUGH NOVEMBER 3, 2011, AND APPROVING A SUMMARY FOR PUBLICATION.

WHEREAS, the Kirkland Zoning Code contains regulations relating to the lapse of approval of zoning permits; and

WHEREAS, the Kirkland Municipal Code contains regulations relating to the recordation time limit for plats; and

WHEREAS, due to the current economic downturn developers have had to delay or suspend their land use projects; and

WHEREAS, the Master Builders Association of King County on behalf of their members requested regulatory relief in the form of the extension of land use and building permit applications beyond those which are typically allowed while economic circumstances beyond their control remain; and

WHEREAS, developers have requested temporary relief from current permit expiration regulations to keep land use permits active; and

WHEREAS, it is the City Council's desire to provide reasonable and temporary relief to help mitigate the impacts of the economic downturn; and

WHEREAS, the adoption of interim regulations will provide the development community time to find relief to help mitigate the impacts of the economic downturn; and

WHEREAS, the interim regulations are procedural in nature, and therefore exempt from State Environmental Policy Act (SEPA) review; and

WHEREAS, the City Council, after holding a public hearing, Ordinance No. 4219 passed on December 1, 2009, after holding a public hearing, the City Council adopted interim regulations that extend land use approvals; and

WHEREAS, on June 1, 2010, the City Council, after holding a public hearing, renewed Ordinance No. 4219 through December 1, 2010; and

WHEREAS, on November 16, 2010, the City Council held a public hearing on renewal of Ordinance No. 4219 through May 16, 2011; and

WHEREAS, on May 3, 2011, the City Council held a public hearing on renewal of Ordinance No. 4219 through November 3, 2011; and

WHEREAS, the City Council desires to renew Ordinance No. 4219 through November 3, 2011, with certain modifications, as set forth in this Ordinance; and

WHEREAS, the City has the authority to adopt an interim zoning ordinance pursuant to RCW 35A.63.220 and RCW 36.70A.390;

NOW THEREFORE, the City Council of the City of Kirkland do ordain as follows:

Section 1. Upon receipt of a written request from the applicant, the Planning Director is hereby authorized to extend without fee: 1) the time to begin construction or to submit to the City a complete building permit application, or 2) the time to substantially complete construction for the development activity. In the event an applicant requests an extension of the time to begin construction or submit a complete building permit application, the applicant shall automatically receive a corresponding extension of the time to complete construction for development activity. The authorization may apply to pending land use permits or approvals for one year from the scheduled expiration date for the following types of land use permits: Reasonable Use (Kirkland Zoning Code Section 90.140); Cottage, Carriage and 2/3 Unit Homes (Kirkland Zoning Code Chapter 113); Personal Wireless Facility (Kirkland Zoning Code Chapter 117); Planned Unit Development (Kirkland Zoning Code Chapter 125); Design Board Review (Kirkland Zoning Code Sections 142.35 through 142.55); Process I (Kirkland Zoning Code Chapter 145), IIA (Kirkland Zoning Code Chapter 150), and IIB (Kirkland Zoning Code Chapter 152). The one year extensions authorized by this Section shall apply in addition to other extensions that may be available under the Kirkland Zoning Code. An applicant may not request more than two extensions under this Section. An applicant may request both extensions at any time after final approval of the land use permit or approval. If an applicant has previously sought only one extension, then the applicant shall request the second extension within 180 days prior to the expiration of the first extension period. This Section shall not apply to land use permits or approvals that are expired.

Section 2. Applicability. Section 1 of this Ordinance shall apply to and take precedence over any conflicting provisions in Kirkland Zoning Code Sections 90.140.8, 113.45, 117.100, 125.80, 142.55, 145.115, 150.135 and 152.115 until such time as this ordinance is repealed or expires. Any extensions granted under Section 1 of this Ordinance shall remain in effect until expiration of the applicable extension periods, even if that occurs after this Ordinance is repealed or expires.

Section 3. Upon receipt of a written request from the applicant, the Planning Director is hereby authorized to extend, without fee, the four year recordation period for approved plats from 4

years to 6 years. An applicant who has previously sought a two year extension under this Section may seek an additional one year extension, which would extend the recordation period to a total of 7 years. An applicant may not request more than two extensions under this Section. An applicant may request both extensions at any time after final approval of the plat. If an applicant has previously sought only one extension, then the applicant shall request the second extension within 180 days prior to the expiration of the first extension period. This Section shall not apply to land use permits or approvals that are expired.

Section 4. Applicability. Section 3 of this Ordinance shall apply to and take precedence over any conflicting provisions in Kirkland Municipal Code Sections 22.16.130 and 22.20.370 until such time as this ordinance is repealed or expires. Any extensions granted under Section 3 of this Ordinance shall remain in effect until expiration of the applicable extension periods, even if that occurs after this Ordinance is repealed or expires.

Section 5. Vesting. The Planning Director shall not issue an extension under Section 1 or Section 3 of this Ordinance if a Title of the Zoning or Municipal Code has been amended affecting the property for which the permit was issued or the permit application pertains unless the applicant agrees in writing to abide by the applicable amended provisions.

Section 6. The interim regulations adopted by this Ordinance shall continue in effect for a period of up to one hundred eighty (180) days from the effective date of this Ordinance, unless repealed, extended, or modified by the City Council.

Section 7. Findings of Fact.

- A. The recitals set forth on pages 1-2 above are hereby adopted as findings of fact.
- B. The Kirkland Zoning Code and Municipal Code provide for opportunities to obtain time extensions for various applications and approvals; however these time extensions are of limited duration and are not of sufficient length to enable extensions beyond the current economic downturn.
- C. Providing for extensions of certain development-related applications and approvals may aid the local economy by helping the construction industry to weather the economic downturn while preserving the investments made in the development permitting process.
- D. Maintaining the viability of development applications and approvals will help to ensure that the development industry is in a position to respond more quickly once favorable economic conditions return.

Section 8. Duration. The Council may adopt extensions of this Ordinance after any required public hearing pursuant to RCW 35A.63.220 and RCW 36.70A.390.

Section 9. Severability. Should any provision of this Ordinance or its application to any person or circumstance be held invalid, the remainder of the ordinance or the application of the provision to any other persons or circumstances shall not be affected.

Section 10. Houghton Community Council. To the extent the subject of this Ordinance, pursuant to Ordinance No. 2001, is subject to the disapproval jurisdiction of the Houghton Community Council, this Ordinance shall become effective within the Houghton Community Municipal Corporation only upon approval of the Houghton Community Council or the failure of said Community Council to disapprove this Ordinance within 60 days of the date of passage of this Ordinance.

Section 11. Except as provided in Section 10, this Ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication, pursuant to Kirkland Municipal Code 1.08.017, in the summary form attached to the original of this ordinance and by this reference approved by the City Council as required by law.

Passed by majority vote of the Kirkland City Council in open meeting this 3rd day of May, 2011.

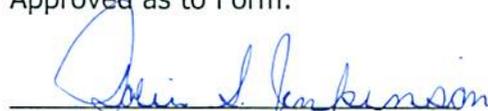
Signed in authentication thereof this 3rd day of May, 2011.


MAYOR

Attest:


City Clerk

Approved as to Form:


City Attorney

PUBLICATION SUMMARY
OF ORDINANCE NO. 4300

AN INTERIM ORDINANCE OF THE CITY OF KIRKLAND RELATING TO LAND USE AND ZONING, PROVIDING INTERIM OFFICIAL CONTROLS REGARDING LAND USE PERMIT EXTENSIONS FILE NO. MIS09-00022, MODIFYING AND EXTENDING ORDINANCE NO. 4219 THROUGH NOVEMBER 3, 2011, AND APPROVING A SUMMARY FOR PUBLICATION.

SECTIONS 1 - 8. Provide for the interim official controls regarding land use permit and plat extensions and extends Ordinance No. 4219 through November 3, 2011.

SECTION 9. Provides a severability clause for the ordinance.

SECTION 10. Provides that the effective date of the ordinance is affected by the disapproval jurisdiction of the Houghton Community Council.

SECTION 11. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the 3rd day of May, 2011.

I certify that the foregoing is a summary of Ordinance 4300 approved by the Kirkland City Council for summary publication.



City Clerk

ORDINANCE O-4326

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO LAND USE AND ZONING, PROVIDING INTERIM OFFICIAL CONTROLS REGARDING LAND USE PERMIT EXTENSIONS, FILE NO. MIS09-00022, AS ADOPTED BY ORDINANCE 4300, AND EXTENDING ORDINANCE 4300 THROUGH May 1, 2012.

WHEREAS, the City Council has the authority to adopt interim regulations pursuant to RCW 35A.63.220 AND 36.70A.390; and

WHEREAS, by Ordinance No. 4219 passed on December 1, 2009 after holding a public hearing, the City Council adopted interim regulations that extend land use approvals; and

WHEREAS, on June 1, 2010, the City Council, after holding a public hearing, renewed Ordinance No. 4219 through December 1, 2010; and

WHEREAS, on November 16, 2010, the City Council held a public hearing on renewal of Ordinance No. 4219 through May 16, 2011;

WHEREAS, on May 3, 2011, the City Council held a public hearing on renewal of Ordinance No. 4219 and considered additional provisions related to the opportunity for second extensions; and

WHEREAS, by Ordinance No. 4300 passed on May 3, 2011, the City Council adopted modified interim regulations that extend land use approvals through November 3, 2011.

WHEREAS, the City Council desires to renew Ordinance No. 4300 through May 1, 2012;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Kirkland as follows:

Section 1. Findings of Fact. The City Council hereby adopts the findings of fact made in Ordinance No. 4300 by reference. The City Council further finds that renewal of Ordinance No. 4300 through May 1, 2012 is necessary in order to help mitigate the impacts of the current economic downturn.

Section 2. Extension of Ordinance 4300. Ordinance 4300 is hereby renewed, to remain in effect through May 1, 2012. Ordinance 4300 thereafter may be renewed for one or more six month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal.

Section 3. Houghton Community Council. To the extent the subject of this Ordinance, pursuant to Ordinance No. 2001, is subject to the disapproval jurisdiction of the Houghton Community Council, this Ordinance shall become effective within the Houghton Community Municipal Corporation only upon approval of the Houghton Community Council or the failure of said Community Council to disapprove this Ordinance within 60 days of the date of passage of this Ordinance.

Section 4. Effective Date. Except as provided in Section 3, this Ordinance shall be in effect five days from and after its passage by the Kirkland City Council and publication, pursuant to Kirkland Municipal Code 1.08.017.

PASSED by majority vote of the Kirkland City Council in regular, open meeting this ____ day of _____, 2011 and approved by the City Council as required by law.

SIGNED IN AUTHENTICATION thereof this ____ day of _____, 2011.

Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney