

NO. _____

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF SPOKANE COUNTY, WASHINGTON

IN THE MATTER OF ADOPTING A COUNTY)
ORDINANCE AMENDING SPOKANE)
COUNTY CODE SECTION 3.02.020 TO)
CREATE AN ADDITIONAL MECHANISM)
FOR VESTING AND A NOMINAL FEE)
CONNECTED THERETO FOR INDIVIDUALS)
AFFECTED BY THE GRAY AND OREGON)
ROAD FIRES THAT ARE THE SUBJECT OF)
THE EMERGENCY DECLARATION UNDER)
RESOLUTION 23-0501 FOR THE PURPOSE)
OF EXPEDITING REBUILDING EFFORTS)

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN by the Board of County Commissioners of Spokane County, Washington (“Board”), pursuant to chapter 36.32 RCW, that a public hearing will be held on:

TUESDAY, September 12, 2023, AT 2:00 P.M.

or as soon as possible thereafter in the
Commissioners Hearing Room, Lower Level
Spokane County Public Works Building
1026 West Broadway Avenue
Spokane, WA 99260

The public will also be able TO participate via conference call by calling 1-877-853-5257 (MEETING ID: 856 7484 5677) and/or view the public meeting via: Webinar Link: <https://us02web.zoom.us/j/85674845677> (MEETING ID: 856 7484 5677).

BACKGROUND

Counties are authorized by RCW 36.32.120(7) to make and enforce by ordinance all such police and sanitary regulations as are not in conflict with state law. The Board wishes to consider an Ordinance allowing the victims of the Gray and Oregon Road Fires to obtain expanded vesting rights and a fee reduction for certain permits.

PURPOSE

The purpose of the above scheduled public hearing will be to consider public testimony and take action on adopting an Ordinance under Spokane County Code Chapter 3.02.020, regarding the expansion of certain vesting rights for the victims of the Gray and Oregon Road Fires. The County may adopt edits or revisions at this public meeting, depending on public testimony, reports by staff, or other considerations.

SUMMARY

The proposed ordinance will be located under Chapter 3.02.020 and proposes to add the following provisions:

(e) Vesting. In addition to the vesting provisions permitted under RCW 19.27.095(1), and subject to the limitations set forth above, a valid and fully complete demolition permit application submitted in connection with, and as the result of, the Gray or Oregon Road Fires that were subject to the Declaration of Emergency in Resolution 23-0501, that is otherwise permitted under the zoning or other land use control ordinances in effect on the date of the application, shall vest the subsequent building construction permit(s) for three years under the building, zoning, and other land use control ordinances in effect on the date of the demolition permit application and be considered under the same, unless otherwise prohibited by law. This vesting provision shall apply retroactively to any valid, completed demolition permit application submitted in connection with the Gray or Oregon Road Fires as recognized in the Declaration of Emergency in Resolution 23-0501. The vesting provisions under this subsection inure to the landowner between August 18-31st, 2023, are non-transferable, and shall not run with the land. To vest under this subsection, a completed application for a demolition permit is defined as:

- (1) those requirements delineated in RCW 19.27.095(2), where applicable, and Section 105.3 of the IBC—*except that*, the submission of detailed “construction documents” is waived, because such detailed plans are not necessary to obtain compliance with the IBC with respect to the nature of the work applied for under the demolition permit; *instead*, such demolition permit applications must include a site plan that shows: lot lines; structures on parcel—with structure(s) to be demolished labelled, identification of any bodies of water, and the identification of temporary erosion and sediment controls;
 - (2) the address/location of the parcel subject to the demolition permit indicate the location is in the area of the Gray or Oregon Road Fires, as confirmed by Spokane County Staff;
 - (3) a Notice of Intent (NOI) from Spokane Regional Clean Air;
 - (4) an attestation from the owner of the parcel that the building(s) subject to the demolition permit were damaged or destroyed by the Gray or Oregon Road fires that are the subject of the Emergency Declaration in Resolution 23-0501, and that the owner intends to initiate the rebuilding of the damaged structures within eighteen months; and
- (5) Any applicable fees.

A copy of the proposed Ordinance is available for public inspection at:

- 1) The Spokane County Building Department website at:
www.spokanecounty.org/5449/Fire-Disaster-Relief
- 2) The Spokane County Building Department at 1026 W. Broadway Ave., Spokane, WA 99260. Requests for information should be directed to Monty Chamberlain, Building Director (509) 477-7468.

In addition, a copy of the proposed Ordinance will be mailed without charge to any person who requests it in writing from the Spokane County Building Department at the above address.

To ensure that everyone attending has an opportunity to speak, testimony may be limited to three (3) minutes per speaker. The Board of County Commissioners reserves the right to adjust the time frame allotted to speakers, as well as hearing procedures, during the hearing.

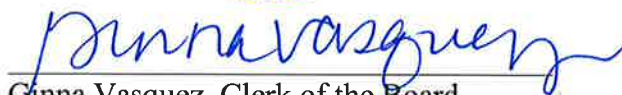
Any written comments on the subject of the public hearing must be received by Thursday, September 7, 2023, no later than 12:00 NOON by gvasquez@spokanecounty.org.

AMERICANS WITH DISABILITIES ACT (ADA) INFORMATION: Spokane County is committed to providing equal access to its facilities, programs and services for persons with disabilities. The Commissioner's Hearing Room at 1026 West Broadway is wheelchair accessible and is equipped with an infrared assistive listening system for persons with hearing loss. Individuals requesting reasonable accommodations or further information may call, write, or email Ashley Cameron at (509) 477-5750 (TDD), 824 North Adams Street, Spokane, WA, 99260; or acameron@spokanecounty.org. Please contact us forty-eight (48) hours before the meeting date.

BY ORDER OF THE CHAIR OF THE BOARD this 1st day of September, 2023.

Attest:




Ginna Vasquez, Clerk of the Board

BOARD OF COUNTY COMMISSIONERS
OF SPOKANE COUNTY, WASHINGTON


MARY L. KONEY, CHAIR

(Publish: Spokesman Review: One time no later than September 2, 2023)

ORDINANCE NO. 23-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF SPOKANE COUNTY, WASHINGTON AMENDING SPOKANE COUNTY CODE SECTION 3.02.020 TO CREATE AN ADDITIONAL MECHANISM FOR VESTING AND A NOMINAL FEE CONNECTED THERETO FOR INDIVIDUALS AFFECTED BY THE GRAY AND OREGON ROAD FIRES THAT ARE THE SUBJECT OF THE EMERGENCY DECLARATION UNDER RESOLUTION 23-0501 FOR THE PURPOSE OF EXPEDITING REBUILDING EFFORTS.

WHEREAS, the Board of County Commissioners of Spokane County, Washington (“the Board”), pursuant to the provisions of RCW 36.32.120(6), has the care of County property and the management of County funds and business; and

WHEREAS, pursuant to RCW 19.27.031, which mandates that counties and cities adopt by reference the state building code as outlined therein, the Board adopted an Ordinance codified in Spokane County Code Title 3 related to Building and Structures; and

WHEREAS, RCW 19.27.040 permits counties and cities to amend the state building code so long as it does not interfere with the minimum performance standards of the code and objectives enumerated in RCW 19.27.020; and

WHEREAS, vested rights, originally existing at common law, are statutorily prescribed and contained within RCW 19.27.095 (building permits), 58.17.033 (plats), 36.70B.180 (development agreements); and

WHEREAS, the Supreme Court of Washington in *Erickson & Associates, Inc. v. McLerran*, 123 Wn.2d 864, 873, 872 P.2d 1090(1994) acknowledged that municipalities are “free to develop vesting schemes, in addition to those proscribed by the state legislature outlined above, that are best suited to the needs of a particular locality”; and

WHEREAS, the Final Bill Report on the bill enacting RCW 19.27.095 and RCW 58.17.033 (cited with approval and relied on by the Court in *Snohomish Cnty v. Pollution Control Hr’gs Bd.*, 187 Wn.2d 346, 363–64 (2016)) recognized:

Washington State has adhered to the current vested rights doctrine since the Supreme Court case of *State ex rel. Ogden v. Bellevue*, 45 Wn.2d 492, 275 P.2d 899 (1954). The doctrine provides that a party filing a timely and sufficiently complete building permit application obtains a vested right to have that application processed according to zoning, land use and building ordinances in effect at the time of the application. The doctrine is applicable if the permit application is sufficiently complete, complies with existing zoning ordinances and building codes, and is filed during the period the zoning ordinances under which the developer seeks to develop are in effect. If a developer complies with these

requirements, a project cannot be obstructed by enacting new zoning ordinances or building codes.

; and

WHEREAS, on Friday, August 18, 2023, wildfires (“Gray Fire” and “Oregon Road Fire”) began and rapidly and intensely spread in and around the City of Medical Lake and the northern area of Spokane County near Elk, ultimately consuming more than 21,000 acres of land, taking at least two lives, destroying at least 366 homes, numerous outbuildings, and other property, and ranking among the worst natural disasters in the history of the Inland Northwest region (<https://www.seattletimes.com/seattle-news/environment/firefighters-make-progress-on-gray-and-oregon-road-fires/>); and

WHEREAS, on Saturday, August 19, 2023, the Board of County Commissioners of Spokane County, by Resolution 23-0501, declared a state of emergency in response to the Gray and Oregon Road Fires; and

WHEREAS, the Board of County Commissioners recognizes that many homes were destroyed in the fires which will need to be rebuilt and the County wishes to provide the predictability that comes with vested rights to allow the victims of the Gray and Oregon Road fires to better, and more expeditiously, plan and rebuild; and

WHEREAS, Spokane County is in the midst of a housing shortage and a homebuilding labor shortage ([Need for home builders is 'tremendous' as current workforce nears retirement and housing shortage grows | The Spokesman-Review](#)) leading to long construction wait times, increased expenses, and limited home-purchasing alternatives; and

WHEREAS, the current, statutorily-proscribed processes for vesting—including those steps for submitting a completed building permit application, which has minimum requirements as mandated by RCW 19.27.095(2)—can be time-consuming, labor intensive, and expensive, and the individuals affected by the fires are rebuilding out of necessity rather than choice and will require a more expeditious pathway to vesting in order to ensure a level of certainty for rebuilding efforts; and

WHEREAS, the process for rebuilding for those individuals affected by the fire may also require additional time-consuming processes prior to the application of a building permit, such as insurance claims and processes or loan applications; and

WHEREAS, the County wishes to expedite these individuals’ ability to vest and ease the financial burden related thereto, given the declared state of emergency, by implementing an ordinance permitting individuals who were victims of the Gray and Oregon Road Fires to vest under an earlier, less onerous permit application than a building permit application; and

WHEREAS, a “demolition permit” is already required under Spokane County Code 3.02.020(a) and 3.02.021(d) for full or partial demolition of structures and buildings damaged, in relevant part, by fires that would preclude the application for a building permit; and

WHEREAS, all conditions for a complete application that results in vested development rights must be set out by local ordinance (*see* RCW 19.27.095(2); 58.17.033(2)); and

WHEREAS, the Board wishes to enable victims of the Gray and Oregon Road fires to vest a later-acquired construction building permit under the earlier application of a demolition permit; and

WHEREAS, pursuant to Spokane County Code 3.02.080, the Board generally sets the fees for permits and inspections; and

WHEREAS, RCW 19.27.100 does not prohibit a county from imposing fees different from those set forth in the state building code; and

WHEREAS, Spokane County Code 3.08.010(k) currently contains a mechanism which permits a modification of all or a portion of the fees “for special individual circumstances where there is extreme economic hardship, issues of fundamental fairness, or where application of the fee schedule is otherwise unreasonable or impractical” but such process requires each individual to submit an application for a fee waiver or reduction and an individualized determination to be made by the County Building Director and Chief Executive Officer; and

WHEREAS, the Board takes notice that consistent with the intent behind SCC 3.08.010(k) the Gray and Oregon Road fires have created a circumstance of extreme economic hardship and have created issues of fundamental fairness requiring individuals who have suffered an unexpected catastrophic loss to pay for the demolition related thereto and the Board wishes to therefore create a separate fee for demolition permits for those who are demolishing homes or structures lost or damaged in the Gray and Oregon Road fires; and

WHEREAS, pursuant to RCW 36.32.120(7) at least 10 days’ notice must be given prior to the adoption of an ordinance enacted under the Board’s police and sanitary regulation powers; and

WHEREAS, after the required public notice, the Board held a public hearing on September 12th, 2023; deliberated on the proposed Ordinance and Code amendments, and

thereafter took a vote, and a majority of the Board being in favor of the same:

NOW, THEREFORE, BE IT ORDAINED:

Section 1. The Board makes the following findings:

1. The foregoing recitals are adopted as findings as if set forth in full herein.
2. This proposal is to amend Spokane County Code (SCC) Title 3, specifically by adding a provision to SCC 3.02.020.
3. Procedural requirements.
 - a. This ordinance is exempt from the State Environmental Policy Act, chapter 43.21C RCW (“SEPA”) requirements pursuant to WAC 197-11-800(19)(a) and (b).
 - b. This ordinance is exempt from planning commission review because it implements the State Building Code Act, not the Growth Management Act.
 - c. This ordinance does not adopt development regulations, therefore, notice to the Washington State Department of Commerce of intent to adopt pursuant to RCW 36.70A.106 is not required.
 - d. The public participation process used in the adoption of this ordinance has complied with all applicable requirements of State and local laws.
 - e. This ordinance is consistent with the record.

Section 2. The Board makes the following conclusions:

1. The Board concludes that the Ordinance promotes the health, safety, and welfare of the general public by:
 - a. Providing an expeditious method for individuals involved in the incidences of the Gray and Oregon Road fires who found their homes unexpectedly destroyed to vest a later acquired construction permit at a time earlier than proscribed in current law.
 - b. Allowing these individuals to plan with more certainty and more expeditiously based on existing regulations, rebuild, and become

rehoused.

- c. Potentially decreases the time these individuals remain unhoused, especially in light of the current housing crisis and construction labor shortage, where there is already more demand than there are houses, or people available to build them.
- d. May decrease the amount of time these individuals may be living in temporary structures, such as Recreational Vehicles, which often have fewer safety and sanitation protections than a permanent housing structure.
- e. May decrease the amount of time these individuals find themselves in rental units, which is also already suffering from an existing shortage, resulting in further shortage of such units for the general public of Spokane County.
- f. May reduce the amount of time that vacant, potentially contaminated, unused, or “zombie properties” exist in the communities and neighborhoods affected by such catastrophic events.
- g. May decrease costs and expenditures for these individuals by vesting to current procedures and regulations that may be less onerous, or at least less predictable, than procedures not yet adopted or implemented.
- h. Provide certainty to these individuals in a time of uncertainty.
- i. Not adding to the financial burden of the victims of the Gray and Oregon Road fires by reducing the standard fee for a Demolition Permit to a fee of \$25, and waiving all associated demolition inspection fees, for these individuals.

NOW, THEREFORE, BE IT FURTHER ORDAINED by the Board of County Commissioners of Spokane County, Washington, that Spokane County Code 3.02.020 be amended as follows:

A new subsection shall be added to Spokane County Code 3.02.020—Permits Required—to read as follows:

(e) Vesting. In addition to the vesting provisions permitted under RCW 19.27.095(1), and subject to the limitations set forth above, a valid and fully complete demolition permit application submitted in connection with, and as the result of, the Gray or Oregon Road Fires that were subject to the Declaration of Emergency in Resolution 23-0501, that is otherwise permitted under the zoning or other land use control ordinances in effect on the date of the application, shall vest the subsequent building construction permit(s) for three years under the building, zoning, and other land use control ordinances in effect on the date of the demolition permit application and be considered under the same, unless otherwise prohibited by law. This vesting provision shall apply retroactively to any valid, completed demolition permit application submitted in connection with the Gray or Oregon Road Fires as recognized in the Declaration of Emergency in Resolution 23-0501. The vesting provisions under this subsection inure to the landowner between August 18-31st, 2023, are non-transferable, and shall not run with the land. To vest under this subsection, a completed application for a demolition permit is defined as:

- (1) those requirements delineated in RCW 19.27.095(2), where applicable, and Section 105.3 of the IBC—*except that*, the submission of detailed “construction documents” is waived, because such detailed plans are not necessary to obtain compliance with the IBC with respect to the nature of the work applied for under the demolition permit; *instead*, such demolition permit applications must include a site plan that shows: lot lines; structures on parcel—with structure(s) to be demolished labelled, identification of any bodies of water, and the identification of temporary erosion and sediment controls;
- (2) the address/location of the parcel subject to the demolition permit indicate the location is in the area of the Gray or Oregon Road Fires, as confirmed by Spokane County Staff;
- (3) a Notice of Intent (NOI) from Spokane Regional Clean Air;
- (4) an attestation from the owner of the parcel that the building(s) subject to the demolition permit were damaged or destroyed by the Gray or Oregon Road fires that are the subject of the Emergency Declaration in Resolution 23-0501, and that the owner intends to initiate the rebuilding of the damaged structures within eighteen months; and

(5) Any applicable fees.

BE IT FURTHER ORDAINED by the Board, that the fee schedule shall be modified to reflect that applications for demolition permits that give the address of the location of the structure(s) to be demolished as one that appears to be in the area of the Gray or Oregon Road fires, when accompanied by an attestation of the applicant that such structure to be demolished was destroyed or damaged by the Gray or Oregon Road fires shall be charged only \$25 as the application fee for the demolition application permit, and all subsequent inspections related to the demolition permit shall be waived. All other building permits and fees remain unchanged.

BE IT FURTHER ORDAINED by the Board that this Ordinance, to be codified in SCC 3.02.020 and the fee schedule, shall take effect immediately upon passage and execution.

PASSED AND ADOPTED BY THE BOARD this ____ day of September, 2023.

BOARD OF COUNTY COMMISSIONERS
OF SPOKANE COUNTY, WASHINGTON

MARY L. KUNEY, CHAIR

ATTEST:

JOSH KERNS, VICE-CHAIR

Ginna Vasquez
Clerk of the Board

AL FRENCH, COMMISSIONER

AMBER WALDREF, COMMISSIONER

CHRIS JORDAN, COMMISSIONER