



**CITY OF BLACK DIAMOND**  
**April 16, 2009 Meeting Agenda**  
25510 Lawson St., Black Diamond, Washington

**7:00 P.M. – CALL TO ORDER, FLAG SALUTE, ROLL CALL**

**PUBLIC COMMENTS:** Persons wishing to address the City Council regarding items of new business are encouraged to do so at this time. When recognized by the Mayor, please come to the podium and clearly state your name and address. Please limit your comments to 3 minutes. If you desire a formal agenda placement, please contact the City Clerk at 253-631-0351. Thank you for attending this evening.

**PUBLIC HEARINGS:**  
**APPOINTMENTS, PRESENTATIONS, ANNOUNCEMENTS:**

**Presentation** – Suburban Cities Association  
**Presentation** – Lake Sawyer Park Foundation  
**Proclamation** – Earth Day

Karen Goroski  
Leah Grant  
Mayor Botts/  
Mr. Nix

**UNFINISHED BUSINESS: None**  
**NEW BUSINESS:**

- |                                                                                                                                   |             |
|-----------------------------------------------------------------------------------------------------------------------------------|-------------|
| 1.) <b>AB09-032</b> – Resolution Authorizing the Use of Credit and Debit Cards for City Fees                                      | Ms. Woods   |
| 2.) <b>AB09-033</b> – Resolution Authorizing First Amendment to Core Funding Agreement                                            | Mr. Combs   |
| 3.) <b>AB09-034</b> – Resolution Authorizing Villages Master Planned Development<br>Pre-Application Agreement                     | Mr. Combs   |
| 4.) <b>AB09-035</b> – Resolution Authorizing Lawson Hills Master Planned Development<br>Pre-Application Agreement                 | Mr. Combs   |
| 5.) <b>AB09-036</b> – Ordinance Adopting Master Planned Development Code Amendments                                               | Mr. Pilcher |
| 6.) <b>AB09-037</b> – Ordinance Amending Title I and Establishment of New Chapter 8.02<br>Relating to Code Enforcement Procedures | Mr. Pilcher |
| 7.) <b>AB09-038</b> – Ordinance Adopting Minor Amendments to Hearing Examiner Code                                                | Mr. Pilcher |
| 8.) <b>AB09-039</b> – Ordinance Amending Black Diamond Municipal Code 2.24- Planning<br>Commission                                | Mr. Pilcher |
| 9.) <b>AB09-040</b> – Resolution Declaring Certain City Property Surplus                                                          | Mr. Esping  |

**DEPARTMENT REPORTS:**  
**MAYOR'S REPORT:**  
**COUNCIL REPORTS:**  
**ATTORNEY REPORT:**  
**PUBLIC COMMENTS:**

**CONSENT AGENDA:**

**10.) Claim Checks** – April 19, 2009, No. 33317 through 33408 (voided check no. 33325) in the amount of \$232,583.52

**11.)Payroll Checks** – March 2009, No.15716 through 15795 in the amount of \$306,053.26

**12.)Minutes** – Council Meeting of April 2, 2009 and Council Workstudy Notes of March 26, 2009

**EXECUTIVE SESSION:** Property Acquisition and Potential Litigation

**ADJOURNMENT:**

# CITY COUNCIL AGENDA BILL

City of Black Diamond  
Post Office Box 599  
Black Diamond, WA 98010

ITEM INFORMATION			
<b>SUBJECT:</b> <b>Resolution No. 09-588, authorizing the City to accept certain credit and debit cards for payment and authorizing the Mayor to enter into a contract for Mt. Rainier Bank to provide credit card processing services for the city</b>	<b>Agenda Date: April 16, 2009</b>		<b>AB09-032</b>
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		
	City Administrator –Gwen Voelpel		
	Asst City Attorney – Tom Guilfoil	X	
	City Clerk – Brenda L. Streepy		
	Finance – May Miller		X
	Public Works – Seth Boettcher		
	Economic Devel. – Andy Williamson		
	Police – Jamey Kiblinger		
Timeline: 2009-11 (max 2-yr agreement)	Court – Kaaren Woods		X
	Comm Development – Steve Pilcher		
	Natural Resources – Aaron Nix		
<b>Attachments: Resolution No. 09-588, Agreement paperwork</b>			
<p>For the past several years, requests have greatly increased from the public for the ability to use credit cards and debit cards to pay court fines, permits, utility bills, and other fees.</p> <p>The City Finance Director reviewed the experience of other cities that have begun accepting payments through credit and debit cards and determined that allowing payments through credit and debit cards could significantly increase city revenues, particularly in regard to fines and fees generated by the municipal court. This is true even though the credit card processing company will charge a small fee for every credit or debit card transaction, because overall payments received will increase. The maximum charge proposed to be allowed for each individual transaction will not exceed seven thousand five hundred dollars (\$7,500).</p> <p>The City solicited quotes for credit card processing services and found that Mt. Rainier Bank provided the best combination of rates and customer service for Merchant Card Services. Therefore, staff is recommending that the Council pass this resolution authorizing the Mayor to enter into a contract for a maximum period of two years for Mt. Rainier Bank to provide credit card services for the City; at this time, the program would involve accepting VISA, MasterCard, and Discover cards. At the end of the two-year trial period, the City could evaluate the success of the program and determine whether it is worth continuing or otherwise amending.</p> <p>The program would be administered by the City's Finance Director.</p>			
<b>COMMITTEE REVIEW AND RECOMMENDATION:</b> Recommend Council approval.			
<b>RECOMMENDED ACTION: MOTION to adopt Resolution No. 09-588, authorizing the acceptance of credit and debit cards for payment and authorizing the Mayor to enter into an Agreement with Mt. Rainier Bank to process such payments.</b>			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	
April 16, 2009			

## **Resolution No. 09-588**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, AUTHORIZING AND ADOPTING THE ACCEPTANCE OF DEBIT AND CREDIT CARDS THAT ARE VALIDLY ISSUED BY MEMBERS OF VISA U.S.A., INC. ("VISA") MASTERCARD INTERNATIONAL, INC. ("MASTERCARD") AND DISCOVER INC. FOR PAYMENTS TO THE MUNICIPAL COURT, TO THE PERMIT CENTER, AND FOR CITY UTILITIES AND OTHER GENERAL FEES DUE TO THE CITY**

WHEREAS, the City of Black Diamond collects fines and fees for the City's Municipal Court, building and land use permits, user fees and utility charges for service, among other general types of services and licenses; and

WHEREAS, the City of Black Diamond has decided that there are advantages to both our customers and the City in offering an additional method for individuals to make payments to the City; and

WHEREAS, the City's bank is Mt Rainier Bank, FDIC insured, and offers Merchant Card Services, accepting debit and credit cards that are validly issued by members of VISA U.S.A., Inc. ("VISA") MasterCard International, Incorporated ("MasterCard") and Discover; and

WHEREAS, the city solicited quotes for credit card processing services and found that Mt. Rainier Bank could provide the City of Black Diamond a competitive rate and a high quality of service for Merchant Card Services, and offered the best overall value for the City; and

WHEREAS, although there will be fees deducted by the service provider for each credit or debit card transaction, based on the experience of other cities that have begun accepting credit and debit card payments, the City of Black Diamond should see significant additional revenues realized once this method of payment is in place; and

WHEREAS, the maximum charge allowed for each individual transaction will not exceed seven thousand five hundred dollars (\$7,500).

NOW THEREFORE, THE CITY OF BLACK DIAMOND DOES RESOLVE AS FOLLOWS:

Section 1. The City of Black Diamond hereby authorizes and adopts a credit card payment program under which the City shall accept credit and debit cards affiliated with VISA U.S.A., Inc. ("VISA") MasterCard International, Incorporated ("MasterCard") and Discover Card for processing of payments due to the City.

Section 2. The Mayor of the City of Black Diamond is hereby authorized to enter into a Merchant Card Services Agreement with Mt. Rainier Bank for credit card services, under such terms as conditions as approved by the Mayor in consultation with the City's Finance Director, with such Agreement to be for a period of two years or less. This program shall be administered by the Finance Director, or his or her designee, and the program may be implemented upon

passage of this resolution. The Finance Director shall periodically review the program and amend the program as needed to ensure its continuing effectiveness.

RESOLVED this 16<sup>th</sup> day of April, 2009

CITY OF BLACK DIAMOND

\_\_\_\_\_  
Mayor Howard Botts

ATTESTED BY:

\_\_\_\_\_  
Brenda L. Streepy, City Clerk

DATE OF PASSAGE BY THE CITY COUNCIL:\_\_\_\_\_

DATE OF FILING WITH THE CITY CLERK:\_\_\_\_\_

<b>MERCHANT CARD SERVICES</b> MS 6925 P.O. BOX 2036 TACOMA, WA 98401-2036		Merchant agrees to the terms and conditions of this Agreement and certifies that all information provided on this application is true, correct and complete. Each person signing below authorizes Servicer to investigate his or her credit or employment record.	
<b>SERVICER (Bank Personnel Signature)</b> <div>(X) <u>[Signature]</u> Authorized Bank Officer Signature</div> Print Name _____ Phone # <u>253 589 2128</u> Bank Location/Sales Representative _____ Date _____		<b>* MERCHANT (Applicant Signatures)</b> <div>(X) _____ Owner/Officer Signature</div> <div>(X) _____ Owner/Officer Signature</div> DATED: This _____ (Day) of (Month) _____, (Year) _____ For value received, the undersigned jointly and severally unconditionally guarantees to Servicer and its successors and assigns the full and prompt payment and performance when due of all of the obligations of every kind and nature of Merchant arising directly or indirectly out of this Agreement or any document or agreement executed and delivered by Merchant in accordance with the terms of this Agreement. The undersigned further agree to pay to Servicer all costs and expenses (including reasonable attorneys fees) paid or incurred by Servicer in collecting such obligations and in enforcing this guaranty.	
<b>APPLICANT MUST SIGN AS BOTH MERCHANT AND GUARANTOR</b> <b>GUARANTOR AREA REQUIRES SIGNATURE WITHOUT BUSINESS TITLE</b> <b>ORIGINAL DOCUMENT REQUIRED FOR PROCESSING</b>		<b>* GUARANTOR (Merchant Applicant Signatures)</b> <div>(X) _____ Guarantor Signature</div> <div>(X) _____ Guarantor Signature</div>	
<b>NEW MERCHANT ACCOUNT INFORMATION</b> <input type="checkbox"/> SOLE PROPRIETOR <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> CORPORATION <input type="checkbox"/> NON-PROFIT <input type="checkbox"/> LIMITED LIABILITY COMPANY			
MERCHANT "DBA" NAME <u>CITY OF BLACK DIAMOND</u>			
STREET ADDRESS (PHYSICAL) <u>24301 ROBERTS DRIVE</u> (P.O. BOX) <u>885599</u>			
CITY <u>BLACK DIAMOND</u> STATE <u>WA</u> ZIP CODE <u>98010-0599</u>			
BUSINESS TELEPHONE <u>360-886-2560</u> CONTACT TELEPHONE <u>253-631-0351</u>			
CONTACT NAME <u>MAYENE MILLER</u> WEB ADDRESS <u>www.ci.blackdiamond.wa.us</u> E-MAIL ADDRESS <u>mmiller@ci.blackdiamond.wa.us</u>			
MAIL STATEMENTS TO Physical Location <input checked="" type="checkbox"/> Corporate Location <input type="checkbox"/> Corporate Name <u>City of Black Diamond</u> Address <u>PO BOX 599</u> City, State, Zip <u>BLACK DIAMOND, WA 98010</u>			
<input type="checkbox"/> RETAIL STORE FRONT <input checked="" type="checkbox"/> OFFICE <input type="checkbox"/> OUT OF HOME <u>WA, US</u> DATE BUSINESS ESTABLISHED <u>2/19/1959</u> DESCRIPTION OF BUSINESS/PRODUCT <u>LOCAL GOVERNMENT</u> METHOD OF SALES <input type="checkbox"/> RETAIL <input type="checkbox"/> CARD NOT PRESENT <input type="checkbox"/> E-COM <input type="checkbox"/> % CARD NOT PRESENT SEASONAL? _____ ACTIVE MONTHS _____ # OF LOCATIONS _____ (Attach separate sheet - address/phone #) _____ HOW LONG? _____ AVERAGE TICKET? _____			
CURRENT BANKCARD PROCESSOR _____ MERCHANT # _____ FEDERAL TAX I.D. # <u>91-601624</u> VISA/MASTERCARD/DISCOVER NETWORK _____ ANNUAL SALES VOLUME? _____ BUSINESS LICENSE/UBI # <u>601140632</u> TOTAL COMBINED CASH/CREDIT SALES - ANNUAL _____			
<b>BUSINESS CREDIT REFERENCE:</b> (Name/Address/City/State/Zip) <u>MARIO SORCI 24301 ROBERTS DR., BLACK DIAMOND, WA 98010</u> (Area Code and Phone #) <u>360-886-1314</u> MORTGAGEE OR LANDLORD FOR BUSINESS LOCATION _____ MORTGAGEE OR LANDLORD NUMBER _____			
<b>OWNER/OFFICER INFORMATION:</b> (1) Owner's/Officer's Name (Please Print) _____ Owner's/Officer's Address _____ DOB _____ Title _____ % of Ownership _____ Owner's/Officer's Social Security # _____ <input type="checkbox"/> IMPRINTERS NEEDED <input type="checkbox"/> PLATES ONLY METHOD OF DEPOSIT: <input type="checkbox"/> DIALPAY <input type="checkbox"/> ELECTRONIC DRAFT CAPTURE COMMENTS: _____ (2) Owner's/Officer's Name (Please Print) _____ Owner's/Officer's Address _____ DOB _____ Title _____ % of Ownership _____ Owner's/Officer's Social Security # _____ CITY-0390562401 CRT-0390565901 BANK DEPOSIT ACCOUNT # _____ TRANSIT # <u>125108159</u> BANK NAME <u>MT. RAINIER</u> BRANCH <u>BLACK DIAMOND</u>			
<b>CORPORATE / PARTNERSHIP / LIMITED LIABILITY COMPANY RESOLUTION</b> disregard if Sole Owner I, the undersigned, hereby certify that I am the Secretary (Clerk)/General Partner/Manager or Member of _____ a corporation/partnership/limited liability company duly organized and existing under the laws of the state of _____; that the following is a true copy of resolutions adopted by the governing body of said corporation/partnership/limited liability company at a meeting duly held on the _____ day of _____, 20_____, at which a quorum was present; and that such resolutions have not been rescinded or modified. "RESOLVED that _____ Name _____ Title _____ _____ Name _____ Title _____ _____ Name _____ Title _____ or any of the above named individuals is authorized to execute the above agreement/plan and to bind the corporation/partnership/limited liability company to all of the terms included therein, including but not limited to the debiting or crediting to any of Merchant's accounts as provided in said agreement/plan, the execution of any documents, forms or other written instruments contemplated herein and Servicer is specifically authorized to rely on the representations, actions or omissions of said named individuals or any one of them."			

# MERCHANT AGREEMENT

This Agreement is between Merchant Card Services, a division of Columbia State Bank (CSB), its qualified sponsored agent relationships, and the undersigned merchant ("Merchant").

**RECEIPTS:** Merchant Card Services ("Service") participates in the VISA, Discover® Network and MasterCard credit card payment systems (each referred to as a "System"). Service accepts sales drafts from qualified members that are deposited at CSB, or its qualified sponsored affiliate, for processing through the System's interchange or other settlement process. Merchant desires to honor System cards ("Cards") and will offer to Service all sales drafts relating to such transactions.

## TERMS OF AGREEMENT

### SECTION 1: Card Transactions

**APPLICATIONS** - Merchant may be required to submit initial credit or financial statements and updated financial statements for itself and its principal owners and executive officers from time to time as determined by Service. Service may require audited or reviewed financial statements. Merchant represents that all information contained in such documents are true statements of fact. Applicants for membership understand that Service will retain this application whether or not it is approved. Applicant authorizes Service to check credit and employment history for itself and its principal owners and executive officer for the purposes of this membership application.

**CARDS HONORED** - Merchant will honor the chosen Card categories (on the reverse side) when properly tendered for use. Merchant agrees not to establish any minimum or maximum transaction amounts as a condition to honor Cards or impose any surcharge or exact any special agreement, condition or security requirement on a System cardholder ("Cardholder") on System transactions. Any tax required to be collected by Merchant must be included in the total transaction amount and not collected separately. In case, Merchant shall not disburse cash in a System transaction with a customer.

**COMPLIANCE WITH APPLICABLE LAWS/INDEMNIFICATION** - Merchant is responsible for complying with any requirements imposed upon Merchant by applicable laws and System regulations, and further agrees to indemnify Service for liability (including legal fees and costs), that results from violation of any such law or regulation resulting from an act or omission of Merchant. Caution: When a qualified Card is presented, it does not guarantee the Cardholder is of legal age to purchase age-restricted products.

**VERIFICATION/AUTHORIZATION OF CARDS** - Merchant shall check each Card for validity, including a comparison of signature appearing on Card with signature on sales draft as well as assure "good from" and "good thru" dates are currently in effect. Merchant will obtain an authorization code for all amounts. Authorization is not a guaranty of payment and may be subject to dispute or chargeback. Merchant shall compare the first four digits of embossed account number on a VISA to the printed four-digit number on VISA. Merchants receiving a positive verification response from System shall record appropriate code provided by System on each sales draft. If Merchant receives a negative verification response, Merchant shall not complete transaction and if instructed by System, Merchant must retain possession of Card; if possible, through reasonably peaceful means. Merchant is required to check Discover Network validity in accordance with established operating regulations.

If using a Magnetic Stripe Reading Terminal for transactions and terminal is unable to read Card's magnetic stripe, Merchant shall complete and obtain Cardholder's signature on a standard sales draft and obtain an imprint.

**FRAUDULENT TRANSACTIONS** - Merchant shall not present a transaction to Service until the Merchant has substantially performed all of its principal obligations to its customer in connection with transaction. Merchant shall not present a transaction to Service that it (or its employees) knows to be fraudulent or not authorized by Cardholder. Merchant acknowledges that Service is required to report the Merchant business name and name of principals to a Combined Terminated Merchant File ("CTMF") and Consortium Merchant Negative File ("CMNF") when Merchant is terminated for cause.

**PROPER AUTHORIZATIONS** - If the total of any transaction is in excess of a dollar limitation imposed by Service, Merchant will obtain specific authorization to accept a sales draft and such authorization will be noted by Merchant in the appropriate place on the sales draft. Merchant shall not use two or more sales drafts originated by use of a single Card to avoid authorization calls.

**COMPLETION OF SALES DRAFT FORMS** - All sales drafts and credit vouchers will be on forms, supplied or approved by Service, and will be completed to include name and location of Merchant, name of Cardholder, name of authorized user (if different), date, description of merchandise sold or services rendered, signature of qualified Cardholder, and total cash price of sale. At least one copy of sales draft, or credit voucher, shall be delivered to Cardholder or authorized user of Card.

**MAIL ORDER, TELEPHONE ORDER, RECURRING TRANSACTIONS** - In each case in which a transaction is completed without imprinting Card on the sales draft, Merchant shall be deemed to warrant the true identity of Cardholder as the authorized holder of such Card. The fact that Merchant has obtained authorization for transaction does not alter such warranty of identity or need for independent identification. Merchants who accept payments of recurring charges (e.g., insurance premiums, subscriptions, membership fees, tuition, utility charges or other such charges) shall obtain from Cardholder a written request that such goods and services be charged to Cardholder's account. Such request shall be retained by Merchant and remain valid until (1) Merchant receives a written cancellation notice from Cardholder and (2) all sales drafts transacted under the request are cleared through the System's settlement process and entered onto Cardholder's account without Cardholder objection. The written request must be updated annually by Cardholder.

**CARDHOLDER INFORMATION** - Merchant shall not disclose to third parties (other than to Merchant's agents for the purpose of assisting Merchant in completing transaction or as specifically required by law) a Cardholder's account information or other personal information obtained without prior written consent of Cardholder. Such consent shall be obtained on a document separate and apart from a sales draft. Merchant may not require Cardholders to provide personal information, such as home or business telephone number, home or business address or driver's license for identification as a condition for honoring Cards.

Merchant shall not, under any circumstances, disclose, sell, purchase, provide or exchange any Cardholder's account number or any credit information relating to any Cardholder's account number or any Sales Drafts or Credit Vouchers which may have been obtained or imprinted with any Card to any person other than Service.

Merchant may not request Card numbers or other account information be recorded on the exterior portion of any order form or similar device designed as a return response from Cardholder.

**CISP (Cardholder Information Security Program), DISC (Discover Information Security Compliance) and SDP (Site Data Protection)** - Merchant agrees to comply with the CISP, DISC and SDP programs mandated by the Card Associations and the Discover Network. These programs define the due care standard for securing VISA, Discover Network and MasterCard Cardholder data, wherever it is located. The standard is required of all entities storing, processing or transmitting cardholder data and is a compliance requirement for all Card acceptance channels whether retail establishments (Card present) or mail/telephone and e-commerce (Card not present). Merchants must immediately report to Service's security personnel any suspected or confirmed loss or theft, including those caused by Merchant's employees, agents or related service providers, of materials or records that contain personally identifiable Cardholder information. The liability involved for compromised information can subject the Merchant to Association and/or Discover Network penalties and fines.

**REFINANCING DELINQUENT OBLIGATIONS** - Merchant shall not refinance a delinquent obligation of a Cardholder including, but not limited to, obligations arising from dishonor of a personal check.

### SECTION 2: Processing of Sales Drafts

General: Subject to the terms and conditions hereof, Service agrees to accept from Merchant and Merchant agrees to offer to Service all sales drafts relating to sales under the System.

**Merchant's Account with Service:** Merchant shall establish and maintain an account at any branch of CSB or its affiliates for the purpose of depositing System sales drafts, subject to the usual rules, terms, conditions and charges for such accounts. Such account may also be used for other banking transactions. Accounts unrelated to this Agreement may be established at another institution.

**DELIVERY OF SALES DRAFTS** - Merchant shall deliver all sales drafts to Service the same day for Electronic transaction unless Merchant requests authorization for delayed delivery until the goods are delivered, shipped or services performed or because Merchant qualifies for delayed delivery by obtaining an authorization on each installment transaction.

Merchant shall not deposit sales drafts drawn on Merchant's own personal or business Card without previous approval from Service and never for the advance of funds.

Merchant shall not deposit sales drafts not originated as a result of a direct transaction or act between Cardholder and such Merchant.

Merchant shall not accept any payment from Cardholder and submit a credit voucher for the purpose of effecting payment of Cardholder's account.

Merchant shall not deposit drafts that it knows or should have known to be fraudulent or not authorized by Cardholder.

**Warranties on Collectability:** Merchant warrants that as of the date any sales drafts are tendered to Service, Merchant has no reason to question the validity of the sales draft or its collectability. Warranties by Merchant Lawyers: Merchants who practice law warrant that services rendered pursuant to any sales draft will not relate to any bankruptcy, insolvency, or receivership of similar creditor proceeding of Cardholder.

**Credit for Sales Drafts:** Service will credit Merchant's account for sales drafts tendered by Merchant. A discounting fee, at a rate from time to time established by Service, shall be charged on a periodic basis by Service to Merchant's account.

Service reserves the right not to purchase tendered sales drafts, provided Service gives notice to Merchant that Merchant may not draw on amounts so tendered for a reasonable period to be determined by Service. The affixing of Merchant's name together with preparation and delivery by Merchant of sales drafts shall constitute an endorsement, negotiation and sale by Merchant to Service subject to Service's right of recourse as stated herein. Merchant hereby waives notice of default or nonpayment; protest or notice of protest; demand for payment and any other demands or notices in connection with any sales draft. Merchant hereby consents to extensions of time, granted or compromises made with any Cardholder liable on any sales draft without affecting Merchant's liability on the sales drafts or under this Agreement.

Merchant acknowledges that Service's agreement as set forth in this Agreement to accept or purchase sales drafts and the funding of chargebacks constitutes providing financial accommodations on behalf of Merchant.

**Service's Right of Chargeback:** Service reserves the right to chargeback Merchant's account without notice, or to refuse to accept a sales draft, if any of the following conditions apply to a System transaction by Merchant:

- (i) merchandise is returned, whether or not a credit voucher is delivered to Service;
- (ii) any sales transaction exceeds Merchant's dollar limit and has not been specially authorized by the System's authorizing party;
- (iii) the sales draft is alleged to have been drawn, accepted or endorsed improperly or without authority;
- (iv) the sales draft is illegible;
- (v) Cardholder disputes the sale, quality, or delivery of merchandise or performance or quality of services covered by the sales draft;
- (vi) the sales draft was accepted by or from Merchant in breach of any warranty or duty hereunder;
- (vii) financial accommodation for merchandise sold or services performed was a violation of any applicable law or regulation; or
- (viii) Service has received a chargeback voucher from any System Merchant on a sales draft that originated from Merchant.

The foregoing list is not exclusive, and Service reserves the right to chargeback or refuse to accept a sales draft for any lawful reason. Under no circumstances is Service obligated to ascertain the merits of a dispute or alleged dispute concerning a System or transaction under a System among or between Merchant, Cardholder or any Merchant of a System.

Whenever Service has a reasonable basis to believe that it may receive items that it may chargeback under this section to Merchant's account, Service may withhold for a reasonable time, without liability for wrongful dishonor, any funds previously credited to Merchant's account with Service or funds otherwise on deposit by Merchant with Service and may offset any amounts owing under this Agreement against any other account of Merchant or any guarantor. If this Agreement has been terminated for any reason, Service may also prohibit the withdrawal by Merchant of some or all of Merchant's funds held on deposit with Service.

**Refund Policy:** Recognizing Merchant's responsibility to act in a reasonable, commercial manner with its customers, Merchant agrees to establish a fair policy for (1) the exchange and return of merchandise or (2) the refund of defective merchandise or services. Credit for all returns relating to System transactions will be given by submitting System credit vouchers and not given in cash. Merchant may limit its acceptance of returned merchandise or establish a policy to make price adjustments for any transaction, provided that proper disclosure is made and purchased goods or services are delivered to Cardholder at the time of transaction. Proper disclosure by Merchant must be visibly posted at the time of transaction. The following words or similar wording, as applicable, must be legibly printed approximately 1/4 inch high on all copies of the sales draft or invoice being presented to Cardholder for signature and in close proximity to the space provided for Cardholder's signature: "NO REFUND" or "EXCHANGE ONLY" or "IN-STORE CREDIT ONLY".

**System Records:** Service may examine and verify at any reasonable time all records of Merchant pertaining to sales drafts tendered to Service, and Merchant agrees to preserve such records for a period of eighteen (18) months from date of sales draft.

Merchant agrees to reconcile monthly merchant statement for errors, within 60 days. Merchant will bring any errors to Service's attention immediately.

Failure of Merchant to bring to Service's attention within 60 days (or if longer, the shortest period allowed under applicable law) after Service sends or otherwise makes merchant statement available to Merchant will preclude Merchant from asserting against Service a claim based upon claimed error.

### SECTION 3: Merchant As System Participant

**System Regulations:** Merchant agrees to be bound by each System's regulations and procedures, as amended from time to time.

**Display of System Service Marks:** Merchant shall properly display the appropriate System service marks to inform public which Cards will be honored by Merchant.

**Merchant Fees:** Merchant will pay Service an initial setup fee and annual or monthly fee at a time and in an amount agreed upon from time to time by Service and Merchant.

**Imprinters:** Service will provide sales draft and imprinters to Merchant. If not purchased, shall remain the exclusive property of Service and shall be returned to Service upon termination of this Agreement.

**Rights of Service's System Processor:** Merchant understands that CSB is the processor for Service of System transactions, and that all sales drafts offered to Service are tendered to CSB for payment through each System interchange, or other settlement process. Merchant agrees that any transaction that does not conform to this Agreement can be rejected by CSB and charged back to Merchant's account with CSB without notice.

### SECTION 4: Other Provisions

Merchant shall provide Service with notice of intent to transfer, sell or liquidate ownership of business; change the basic nature of its business, including selling any products or services not related to its current business; change of ownership or transfer of control of business; or enter into any joint venture, partnership or similar business arrangement whereby any person or entity not a party of this Agreement assumes any interest in Merchant's business.

**Duration of Agreement:** This Agreement shall continue until terminated and may be terminated, without cause, by either party upon written notice to the other.

**Additional Locations:** This Agreement will bind any and all additional Merchant locations owned by the same sole owner, partnership and/or corporation.

**Merger:** All proposals, negotiations and representations, if any, regarding this Agreement and made prior to the date of this Agreement are merged herein.

**Amendment:** This Agreement may be amended from time to time by Service giving written notice to Merchant of such amendment. Unless Merchant elects to terminate this Agreement, Merchant is deemed to have agreed to said amendment.

**Continued Duties of Merchant After Termination:** Upon termination, Merchant shall continue to be responsible for any financial or other obligations arising from this Agreement. Immediately upon termination, Merchant shall return to Service all materials and supplies furnished to Merchant and shall immediately cease using each System's name and service marks.

**Dispute Resolution:** If this Agreement is referred to an attorney for enforcement, the prevailing party shall be entitled to reasonable attorney's fees and costs. The exclusive venue for any litigation arising out of or related to this agreement will be within the city in which Service has its principal place of business. This agreement will be governed by the laws of the state in which Service has its principal place of business, without regard to the principles of conflicts of law.

(Reverse Side Must Be Completed)

MERCHANT DEBIT AGREEMENT
DEBIT NETWORK TRANSACTIONS
Supplemental Addendum

MERCHANT CARD SERVICES
MS 6925 P.O. BOX 2036 TACOMA, WA 98401-2036

This Debit Network Transactions Supplemental Addendum ("Addendum") supplements the Merchant Agreement ("Merchant Agreement") entered into by "Merchant Card Services" ("Servicer") and the undersigned Merchant ("Merchant"). Except as expressly supplemented or superseded by this Addendum, all terms and conditions of the Merchant Agreement shall remain in full force and effect.

RECITALS. Servicer participates in debit card transaction networks ("Debit Networks") and accepts transactions from qualified merchants for processing through each Debit Network's settlement process. Merchant desires to honor Cards of Debit Networks and send Debit Network transactions to Servicer.

DEFINITIONS. Each of the Debit Networks shall be included as a "System" in the Merchant Agreement. Capitalized terms not otherwise defined herein shall have the meanings defined in the Merchant Agreement.

DEBIT NETWORK TRANSACTIONS

(I) Compliance and Indemnification - Merchant represents and warrants to Servicer that Merchant shall comply with all requirements imposed upon Merchant by applicable laws and Debit Network rules and operating guidelines ("Debit Network Rules"). Merchant shall indemnify, defend and hold Servicer harmless from and against any claim, demand, loss, liability or expense (including attorney's fees, costs and expenses) directly or indirectly resulting from or arising out of (A) any breach of any of the foregoing representation and warranty, or (B) any action or omission of Merchant, its agents, contractors or employees, including, without limitation, any action or omission of Merchant which gives rise to an indemnification obligation on the part of Servicer, whether under the Debit Network Rules or otherwise.

(II) Authorization and Verification - Merchant shall obtain an authorization code for each Debit Network transaction. If Merchant receives a negative response, Merchant shall not complete the transaction. Merchant shall rely on the authorization procedures of the Debit Network and shall not request the cardholder's signature unless specifically required by the applicable Debit Network Rules. Cardholder's PIN cannot be requested for any reason.

(III) Completion of Sales Draft Form or Debit Transaction Receipts - Merchant shall use appropriate forms supplied by Servicer for electronically generated receipts with industry specified formats to meet legal requirements, including Regulation E, 12 CFR 205 for Debit Network transactions. At least one copy of the receipt must be delivered to the cardholder or authorized user of the Card.

(IV) Cashback - At its option, Merchant may choose to offer cash back ("Cashback") to Cardholders where Debit Network transactions are initiated by an electronic signature or "PIN" ("PIN") provided the Cashback amount is included in the authorization amount requested as part of the authorization process. If an authorization is denied with a denial code indicating the Cashback portion causes the Cardholder to exceed cash withdrawal limit imposed by Issuer or the Debit Network prohibits the Cashback feature, Merchant shall inform Cardholder that the transaction was denied, but that a new transaction amount for the purchase alone may be approved. There is a maximum Cashback limit of \$200.00 per transaction or such lower limit as Merchant may establish from time to time. POS terminals require special programs to allow Cashback and Merchant must be registered with the Debit Networks prior to offering Cashback. Merchant should call "Merchant Card Services" at 1-800-900-1946 to request the Cashback Option.

(V) Credits or Reversals - Merchant may initiate a credit to the Cardholder account for an amount not exceeding the original Debit Network transaction if:

CREDITS

A. Cardholder provides a written receipt for the original transaction within

1 year of origination, and the credit transaction is originated using the equipment specified by Servicer in accordance with applicable Debit Network Rules.

REVERSAL

B. If allowed by the Debit Network, a Merchant may reverse a transaction electronically if the transaction is from the same merchant location and is entered before midnight on the original transaction date. Re-entry of the original Cardholder number, PIN, Merchant reference or trace number and exact dollar amount of the transaction being cancelled is required for the reversal.

(VI) Servicer's Right of Chargeback - Servicer reserves the right to chargeback to Merchant's account without notice or refuse to accept Debit Network transactions as provided in the Merchant Agreement. In addition:

(A) DISPUTE RESOLUTION - Merchant agrees to cooperate with the Debit Networks, System members and Servicer in connection with investigation of disputes.

(B) CHARGEBACK - Transactions may be charged back to the Merchant through the related Debit Network.

(VII) Pricing - Pricing for Debit Network transactions are on a cost per transaction basis and depend on each Debit Network. Pass through fees shall be billed and identified on the monthly Merchant Statement. Per transaction rates are subject to fluctuation depending on Debit Network pass through expense.

(VIII) Miscellaneous

(A) DISPUTES - Under no circumstances shall Servicer be obligated to ascertain the merits of a dispute or alleged dispute concerning debit card systems or transaction systems among or between Merchant, Cardholder and the Debit Network or System.

(B) POINT OF SALE UNITS - In accordance with applicable Debit Network Rules, Servicer may require Merchant to cease use of any Debit Network mark at any location outside of the service area of a Debit Network upon sixty (60) days prior notice.

(C) PUBLICATION OF MERCHANT LOCATIONS - In accordance with applicable Debit Network Rules, Servicer or the Debit Network may publish and distribute the business names and locations of Merchant accepting Debit Network cards. Merchant hereby authorizes the foregoing.

(D) AMENDMENT - This Addendum may be amended or modified from time to time by Servicer giving written notice to Merchant of such amendment. Unless Merchant elects to terminate this Addendum, Merchant is deemed to have agree to said amendments and modifications.

(E) TERMINATION OF ADDENDUM - This Addendum to the Merchant Agreement may be terminated, without cause, by either party upon written notice to the other. Upon termination the Merchant identification number shall be removed from the Debit Networks. The Merchant Agreement shall remain in effect unless otherwise terminated, as provided in Section 4 thereof.

MERCHANT (Applicant Signatures)

Form containing merchant details and signatures. Includes fields for: COST PER TRANSACTION \$, SUBJECT TO PASS THROUGH NETWORK COST, FOR BANK USE, MERCHANT SERVICES COMPLETED BY:, By: (Signature), MERCHANT OFFICER SIGNATURE, Inventory: Bank Owned, Merchant Owned, Purchase, Pin Pad Type, Cost \$, V #, Terminal Application, Date, Merchant Name, Merchant #, Address, City, State, Zip, Telephone, Contact, MERCHANT CUSTOMER SIGNATURE, Title.



## POINT OF SALE EQUIPMENT – Conditions

**G. POS EQUIPMENT** – This portion of the Agreement covers all Point of Sale equipment used to access "System":

1. Merchant, employees or agents of Merchant, shall use and operate the Terminals in accordance with the provisions of the "Operations Guide," as amended from time to time, and the Merchant Agreement. Merchant agrees to assume all responsibility for the validity of customer's Card number and the expiration date and to follow the specified procedures set forth in the "Operations Guide," or be subject to chargebacks. **Merchant agrees to verify each transaction regardless of dollar amount through the Terminal.** The electronic authorization code received will be entered, by Merchant, in the appropriate place on the sales draft and/or produced by automated printer.
2. Merchant will obtain the signature of the Cardholder in the appropriate place on the sales draft and verify that such signature bears a reasonable resemblance to that appearing on the Card. In the event the signatures are different, Merchant must obtain a voice or automated response authorization in accordance with the "Operations Guide," prior to completion of the transaction.
3. Merchant agrees not to remove any equipment from its original places of installation without prior consent of Servicer. Merchant will not make, or permit its employees to make, any alterations, attachments, additions or modifications to the equipment without prior consent.

### IF LEASED.

#### 4. Payment of Equipment Fees.

- A. Merchant agrees to pay Servicer a monthly fee for each Terminal in accordance with Servicer's Fee Schedule. The monthly fee shall be payable on the Merchant Billing day of each month.

### IF OWNED OR PURCHASED.

- B. A network telecommunications fee may be assessed for each terminal linked to the Servicer's contracted network, if noted.
- C. Price Change. Servicer may revise the Fee Schedule provided Servicer gives Merchant advance written notice of each change in accordance with the Merchant Agreement.
5. Merchant shall request information only in connection with Merchant's use of the services, which means solely for the purpose of determining whether Merchant should accept Cards in current transactions, and not for credit inquiry purposes or any other purpose.
6. Merchant shall be solely liable for damage or loss of Terminals/Printers Pin Pads provided by Servicer.
7. Servicer is authorized to make whatever inquiries it deems necessary and appropriate for purposes of evaluating Merchant's request to use the System. Merchant agrees that information given to Servicer by Merchant is true, correct and complete.

### FEE SCHEDULE (Per Month)

#### POS

Terminal/Printer @ \$ \_\_\_\_\_ = \$ \_\_\_\_\_  
# Terminals

Pin Pad @ \$ \_\_\_\_\_ = \$ \_\_\_\_\_  
# Pin Pads

Check Reader @ \$ \_\_\_\_\_ = \$ \_\_\_\_\_  
# Check Readers

Stacker (Optional) \$ \_\_\_\_\_

Subtotal \$ \_\_\_\_\_

State & Local Taxes @ \_\_\_\_\_ % = \$ \_\_\_\_\_

Total \$ \_\_\_\_\_

#### Telecommunication/

Network Fee # \_\_\_\_\_ @ \$ \_\_\_\_\_ = \$ \_\_\_\_\_  
Terminals

### FEE SCHEDULE (Per Item)

Debit Transaction Fees \$ \_\_\_\_\_

\_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ \$ \_\_\_\_\_

POS Partner Network Fee \$ \_\_\_\_\_

Var Network Fee \$ \_\_\_\_\_

Other \$ \_\_\_\_\_

\_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ \$ \_\_\_\_\_

SIC/CAT CODE: \_\_\_\_\_

COMMENTS: \_\_\_\_\_

### EQUIPMENT INFORMATION

Number of Terminals \_\_\_\_\_

Serial # \_\_\_\_\_ Model \_\_\_\_\_

Number of Printers \_\_\_\_\_

Serial # \_\_\_\_\_ Model \_\_\_\_\_

Number of Pin Pad \_\_\_\_\_

Serial # \_\_\_\_\_ Model \_\_\_\_\_

Number of Check Readers \_\_\_\_\_

Serial # \_\_\_\_\_ Model \_\_\_\_\_

#### Vendor:

☐ Retail ☐ Restaurant (No Tips \_\_\_\_\_) (Tips \_\_\_\_\_)

☐ Lodging

☐ Manual Close ☐ Auto Close, Time \_\_\_\_\_ ☐ AM ☐ PM

#### Other Card Types:

American Express # \_\_\_\_\_ ☐

Discover # \_\_\_\_\_ ☐

Check Service # \_\_\_\_\_

Gift Card # \_\_\_\_\_

Other # \_\_\_\_\_

Special Dialing Instructions: \_\_\_\_\_

Inventory: ☐ Bank Owned ☐ Merchant Owned ☐ Purchasing

NOTE: After completing form, return ALL copies to: **MERCHANT CARD SERVICES**, MS 6925, P.O. BOX 2036, TACOMA, WA 98401-2036

### FOR BANK USE:

MERCHANT CARD SERVICES COMPLETED BY:

By: (X) \_\_\_\_\_  
MERCHANT OFFICER SIGNATURE

Title: \_\_\_\_\_ Date: \_\_\_\_\_

V # \_\_\_\_\_

Terminal Application \_\_\_\_\_

Date: \_\_\_\_\_

Merchant Name: \_\_\_\_\_

Merchant # \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone ( ) \_\_\_\_\_ Contact \_\_\_\_\_

By: (X) \_\_\_\_\_  
MERCHANT CUSTOMER SIGNATURE

Title: \_\_\_\_\_

ALL COPIES REQUIRED FOR PROCESSING

# MERCHANT CARD SERVICES

## POINT OF SALE / ELECTRONIC DRAFT CAPTURE

### Supplemental Agreement

#### MERCHANT CARD SERVICES

MS 6925 P.O. BOX 2036 TACOMA, WA 98401-2036

This Point of Sale/Electronic Draft Capture Supplemental Agreement supplements that certain Merchant Agreement ("Merchant Agreement") between Merchant Card Services ("Servicer"), a division of Columbia State Bank ("CSB"), its qualified sponsored agent relationships and the undersigned merchant ("Merchant"). In the event of any conflicts between this Agreement and the Merchant Agreement, this Agreement shall control. All capitalized terms used herein, unless otherwise defined, shall have the meaning given in the Merchant Agreement. Merchant and Servicer desire that Merchant supply Servicer with the data contained on VISA/MasterCard sales and credit drafts. This Agreement sets out the manner in which Merchant will supply Servicer with sales and credit draft data ("Data").

#### A. METHOD OF FURNISHING DATA

1. Merchant agrees to furnish Servicer Data by Servicer's designated manner of electronic transmission.
2. Merchant agrees to resupply Servicer with Data within 24 hours of request by Servicer in the event the original Data cannot be processed by Servicer.
3. Merchant agrees that sales received later than two days after the authorization date, not swiped for an electronic read, charged to a foreign card, transacted on a corporate Card, or with different "card types" or transaction requirements, may be assessed at a different rate.
4. Merchant agrees to review its outgoing Data to ensure that Data is not submitted to Servicer twice. In the event Merchant inadvertently supplies the same Data (deposit) twice, Merchant will notify Servicer immediately upon discovery and will assist Servicer in identifying double postings. Merchant agrees to hold Servicer harmless and reimburse Servicer for any and all losses, claims and causes of action (including reasonable attorney fees), resulting from Merchant's failure to properly review outgoing Data.
5. Merchant understands daily reconciliation of Data transmitted to Servicer is the responsibility of the Merchant and its representatives. Merchant agrees to close batches daily.
6. Credit to Merchant's account will ordinarily be made on the 2nd business day of Servicer following the day the Data is received. In unusual circumstances, the credit may be received by Merchant on the 3rd business day. If credit is rendered to a non-CSB account, credit will be in 3 business days in ordinary circumstances and 4 business days in unusual circumstances.
7. Merchant agrees to record on all original sales and credit drafts (slips) the reference number and the authorization number supplied through the System on each transaction or produced by automated printer.
8. Data Capture Merchants using an Electronic Printer should be aware of the following three circumstances that require manual imprint of a Card:
  1. The Merchant receives a voice or automated response authorization.
  2. The magnetic strip cannot be read.
  3. The Cardholder's account number is manually key entered into the terminal, VISA/MasterCard regulations require proof that the Card was physically present at the time of the sale. In these described circumstances, Merchant shall obtain a manual imprint of the Card, have Cardholder sign the draft, staple the draft to the printer receipt, and retain the draft which will provide further protection against chargebacks.
9. If an account number is displayed on the terminal window, Merchant must confirm that the account number embossed on the Card and the Card number displayed on the terminal are identical. If Merchant is using a printer, the account number on the printer receipt must match the number on the Card. If not, call voice authorization or automated response unit for verification.

#### B. DRAFT RETRIEVAL AND RETENTION

1. Merchant agrees to retain original Card sales and credit drafts for 24 months. Cardholder data, which includes account numbers, expiration date and amount of sale, must be stored in an area with restricted access and rendered unreadable prior to discarding.
2. Merchant agrees to provide original or legible copies of Card sales and credit drafts to Servicer within two business days of a request by Servicer. If the draft is not provided to Servicer and Servicer has already given credit to Merchant, Merchant's account will be charged accordingly.

#### C. RESPONSIBILITY FOR LOSSES ARISING FROM FAILURE TO COMPLY WITH THIS AGREEMENT

1. Merchant agrees to hold Servicer harmless from any and all losses, claims and causes of action (including reasonable attorney fees), resulting from Merchant's failure to comply with this Agreement.
2. Servicer will have the right at any time to charge Merchant's account without prior notice or to bill the Merchant for any loss Servicer may sustain as a result of double postings, arithmetic errors in Merchant's favor or failure to provide draft copies. Servicer will advise Merchant in writing of such charges.

#### D. DOWN TIME PROCEDURES

1. In the case of POS failure, Merchant will obtain voice or automated response authorizations for all sales. Merchant agrees to submit these

sales to Servicer by manually entering them, within 24 hours, upon receipt of replacement equipment.

2. Servicer supports the draft capture service to ensure down time is held to a minimum and is not responsible for additional discount rate charges due to equipment or system failures. Merchant must immediately notify Servicer of equipment failures.

#### E. POS SERVICES

1. Merchant understands it must notify Servicer of any desired changes in the programming of the terminal or software. Any other unauthorized changes resulting in a service call by Servicer may be assessed a fee.
2. Merchant must notify Servicer if Merchant elects to employ other POS terminal or software services and enable Servicer to review any change related to the transmission of Cardholder data from any other third party terminal or software services provider.
3. Merchant acknowledges that the third-party terminal or software provider is Merchant's agent for the delivery of VISA/MasterCard transactions to Servicer. Merchant assumes full responsibility and liability for any failure of the terminal or software services agent to comply with the VISA/MasterCard Operation Regulations, including any violation that results in a chargeback to Servicer or Association fines and penalties.
4. Cardholder Information Security Program (CISP) and Site Data Protection (SDP) require the following fraud prevention measures. Merchant customers found in violation are subject to liability as it relates to the Card Association's compliance fines and penalties.  
**CISP/SDP REQUIREMENTS:**
  - \* Install and maintain working firewall to protect data
  - \* Keep security patches up-to-date
  - \* Protect stored data accessible from internet
  - \* Encrypt data sent across public networks
  - \* Use and regularly update anti-virus software
  - \* Restrict access by "need to know"
  - \* Assign unique IDs to each person with access
  - \* Do not use vendor-supplied defaults
  - \* Track access to data by unique ID
  - \* Regularly test security systems and processes
  - \* Implement an information security policy
  - \* Restrict physical access to information
5. Security Requirements: Merchants and its processing agents are prohibited from storing or retaining the full contents of any track on the magnetic stripe, card verification value (CVV) data or card validation code (CVC) data, after a response to an authorization request has been received. This practice is a violation of Card Association regulations and is subject to penalties and fines.

#### F. MISCELLANEOUS

1. In the event Servicer uses an attorney to construe, interpret or enforce any provisions in the Merchant Agreement or this Agreement, or take any action in any bankruptcy, insolvency or similar proceeding affecting creditor's rights generally (including without limitation, prosecution of a motion for relief from stay; proposal of a Chapter 11 plan; objection to proposed use, sales or lease of property), Servicer shall be entitled to recover from Merchant its reasonable attorney fees and other costs incurred irrespective of whether any legal proceedings are commenced. If any legal action, arbitration or other proceedings are instituted in connection with any controversy arising out of this Agreement, Servicer shall be entitled to recover, in addition to its cost, such sum as the court may adjudge reasonable as attorney's fees in both trial and appellate courts.
2. This Agreement may be terminated by either party as described in the Merchant Agreement. Upon the effective date of such termination, Merchant agrees to cease utilization of Equipment and Electronic Draft Capture. All draft capture receipts and leased equipment must be returned to Servicer. All applicable fees must be paid upon termination.
3. Except as supplemented or superseded by this Agreement, all terms and conditions of the Merchant Agreement shall remain in full force and effect.
4. This Agreement is subject to acceptance and execution by Servicer.
5. Waiver by either party of strict performance of any provisions of this Agreement shall not be a waiver or a prejudice of the party's right to require strict performance of the same provision in the future or of any other provision.

(Reverse side must be completed)

# CITY COUNCIL AGENDA BILL

City of Black Diamond  
Post Office Box 599  
Black Diamond, WA 98010

ITEM INFORMATION			
<b>SUBJECT:</b>  <b>Resolution No. 09-589, first Amendment to City of Black Diamond Staff and Facilities Funding Agreement with Yarrow Bay Communities</b>	<b>Agenda Date: April 16, 2009</b>		<b>AB09-033</b>
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		<b>X</b>
	City Administrator –Gwen Voelpel		
	City Attorney – Loren D. Combs	<b>X</b>	
	City Clerk – Brenda L. Streepy		
	Finance – May Miller		
	Public Works – Seth Boettcher		
	Economic Devel. – Andy Williamson		
	Police – Jamey Kiblinger		
Cost Impact:	Court – Kaaren Woods		
Fund Source:	Comm. Dev. – Steve Pilcher		
Timeline:			
<b>Attachments: Resolution No. 09-589, First Amendment</b>			
<b>SUMMARY STATEMENT:</b>  First Amendment to City of Black Diamond Staff and Facilities Funding Agreement between BD Lawson Partners, LP and BD Village Partners, LP and the City of Black Diamond			
<b>COMMITTEE REVIEW AND RECOMMENDATION:</b>			
<b>RECOMMENDED ACTION: MOTION to adopt Resolution No. 09-589, authorizing the Mayor to execute the first amendment to the City of Black Diamond Staff and Facilities Funding Agreement with Yarrow Bay Communities.</b>			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
April 16, 2009			

RESOLUTION NO. 09-589

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, AUTHORIZING THE MAYOR TO SIGN THE FIRST AMENDMENT TO THE CITY OF BLACK DIAMOND STAFF AND FACILITIES FUNDING AGREEMENT WITH YARROW BAY COMMUNITIES

WHEREAS, the City entered into the Staff and Facilities Funding Agreement dated the 29<sup>th</sup> day of June, 2007; and

WHEREAS, the City wishes to pursue Economic Development Activities for community and economic development purposes. Yarrow Bay recognizes that these efforts are of value to Yarrow Bay because they will reduce the City's dependence upon funding from the Agreement; and

WHEREAS, The City and Yarrow Bay wish to increase the frequency of Yarrow Bay's payments under the Agreement from quarterly to monthly and agree to specify a minimum Working Capital Balance that must be available to the City to cover Supplemental Costs not requested through Net Monthly Core City Cost estimates; now, therefore

BE IT RESOLVED that the City Council hereby authorizes the Mayor to execute the First Amendment to the City of Black Diamond Staff and Facilities Funding Agreement, substantially in the form attached hereto.

ADOPTED by the City Council at an open meeting on the 16<sup>th</sup> day of April, 2009.

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Howard Botts, Mayor

Attest:

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Brenda L. Streepy, City Clerk

FIRST AMENDMENT TO  
CITY OF BLACK DIAMOND STAFF AND FACILITIES FUNDING AGREEMENT

**1. Date and Parties.**

This First Amendment to City of Black Diamond Staff and Facilities Funding Agreement is dated the \_\_\_\_ day of April, 2009 and is entered into by and between BD Lawson Partners, LP and BD Village Partners, LP and the City of Black Diamond, a Washington municipal corporation.

**2. Definitions.** All definitions set forth in the City Of Black Diamond Staff and Facilities Funding Agreement dated the 29<sup>th</sup> day of June, 2007 ("Agreement"), as approved by City Resolution 07-451 are incorporated herein by reference. The following definitions are added to Agreement paragraph 2.

"Economic Development Activities" shall mean activities the purpose of which is to encourage or advance the City's independent economic development. Economic Development Activities include, but are not limited to, citywide marketing, advertising and other collateral materials and associated distribution, dues and memberships, mapping of available properties, economic development seminars, conferences, training, and the creation of an economic development plan and implementing action items from that plan for the City.

"First Amendment" shall mean this First Amendment to City of Black Diamond Staff and Facilities Funding Agreement.

"Net Monthly Core City Cost Amount" shall mean the City's estimate of Supplemental Costs (as amended by this First Amendment) for the calendar month to be funded.

"Miscellaneous Expenses" shall include training, travel and other expenses for community development staff that are pre-approved in writing by Yarrow Bay and are not already funded pursuant to the Agreement terms.

"Supplemental Costs" shall mean all expenditures addressed in the Agreement and the First Addendum that are beyond the financial obligations that the City could impose upon Yarrow Bay under City regulations existing as of the Agreement Date and the date of the First Amendment. Supplemental Cost include the costs of funding the Core City Staff, the City Code Consultants, the Facilities Costs, the Legal Costs, the amounts that Yarrow Bay has paid the City prior to the Agreement Date for the City

Code Consultants, Miscellaneous Expenses, Economic Development Activities, and for the salary and benefits of the City's former Community Development Director.

"Working Capital Reserve" shall mean the amount of funding advanced by Yarrow Bay under the Agreement that is not specifically advanced to cover costs identified in the Net Monthly Core City Costs estimates. Working Capital shall be available to fund Supplement Costs not funded through prior estimates.

**3. General Recitals.**

A. The City wishes to pursue Economic Development Activities for community and economic development purposes. Yarrow Bay recognizes that these efforts are of value to Yarrow Bay because they will reduce the City's dependence upon funding from the Agreement. In order to increase budgeting accuracy and provide for the future funding of pre-approved Economic Development Activities, the City and Yarrow Bay wish to add two new funding categories to the Agreement through this First Amendment,

B. The City and Yarrow Bay wish to increase the frequency of Yarrow Bay's payments under the Agreement from quarterly to monthly and agree to specify a minimum Working Capital Balance that must be available to the City to cover Supplemental Costs not requested through Net Monthly Core City Cost estimates.

**4. New Funding Categories.**

**A. Economic Development**

Yarrow Bay shall pay the costs of pre-approved City Economic Development Activities pursuant to the following procedure. Prior to incurring any costs for Economic Development Activities, the City shall provide Yarrow Bay with written notification of the proposed activity or activities and the actual costs thereof. Where actual costs are not available, the City shall notify Yarrow Bay of estimated costs and shall provide Yarrow Bay with the basis, including documentation where available, for its estimate. Upon such notification, Yarrow Bay shall promptly review the proposed Economic Development Activities and provide the City with written notification if the proposed Economic Development Activity is approved, partially approved or disapproved. If approved or partially approved Yarrow Bay shall pay the actual or estimated costs of such activities, up to the approved amount, as set forth in Paragraph 4(C) below. The Parties acknowledge that Yarrow Bay's approval of payment of costs for Economic Development Activities is in Yarrow Bay's complete discretion.

B. Miscellaneous Expenses

Yarrow Bay shall pay the costs of Miscellaneous Expenses pursuant to the following procedure. Prior to incurring any Miscellaneous Expenses, the City shall provide Yarrow Bay with written notification of the proposed activity or activities and the actual costs thereof. Where actual costs are not available, the City shall notify Yarrow Bay of estimated costs and shall provide Yarrow Bay with the basis, including documentation where available, for its estimate. Upon such notification, Yarrow Bay shall promptly review the proposed Miscellaneous Expense and provide the City with written notification if the proposed Miscellaneous Expense is approved, partially approved or disapproved. If approved or partially approved Yarrow Bay shall pay the actual or estimated costs of such activities, up to the approved amount, as set forth in Paragraph 4(C) below. The Parties acknowledge that Yarrow Bay's approval of payment of costs for Miscellaneous Expenses is in Yarrow Bay's complete discretion.

C. Amended Payment Procedure.

Paragraph 4(E) of the Agreement shall be eliminated in its entirety and replaced with the following:

E. Payment Procedure. Yarrow Bay shall advance funds to the City on a monthly basis to pay Supplemental Costs pursuant to the following mechanism. The City shall provide Yarrow Bay with an estimate of the Net Monthly Core City Cost Amount for the month beginning in approximately 50 calendar days (the "Estimate"). Five working days before the start of the calendar month for which the Estimate applies, Yarrow Bay will deposit with the City funds in amount equal to the Estimate, less any credit for unexpended funds or debit for over-expenditures for the previous calendar month. By way of example, by the 10<sup>th</sup> day of March, the City will provide Yarrow Bay an Estimate for the month of May. Five days prior to the end of April, Yarrow Bay will deposit with the City funds equal to the Estimate for May, as submitted by the City in March. The minimum amount of working capital held by the City under the terms of the Agreement during any month will be \$150,000. At any time, should the City find itself with less than \$150,000 to cover Supplemental Costs, the City may make an immediate request of Yarrow Bay to deposit with the City amounts necessary to restore the working capital balance to \$150,000, within five working days of receipt of written notice.

5. Indemnity and Hold Harmless.

If the City imposes the surcharge contemplated by Agreement paragraph 4 (M) because it believes that it has the authority to do so, and the City's authority to do so is challenged, then Yarrow Bay shall pay the City's costs and attorney's fees associated with defending the challenge, and Yarrow Bay shall indemnify and hold the City

harmless from any monetary judgment or award that results directly or indirectly from that challenge.

**6. Agreement in Full Force and Effect.**

The Agreement, except as expressly modified by the First Amendment terms, shall remain in full force and effect. The First Amendment terms are hereby incorporated into the Agreement. The First Amendment and the Agreement shall, to the fullest extent possible, be interpreted to be consistent. Provided, however, in case of conflict between the Agreement terms, and the First Amendment, the First Amendment provisions shall control.

YARROW BAY COMMUNITIES

For BD Lawson Partners, LP and BD Village Partners, LP

---

By: Brian Ross  
Title: Managing Partner

CITY OF BLACK DIAMOND

---

Howard Botts, Mayor

Attest:

---

Brenda L. Streepy, City Clerk



# CITY COUNCIL AGENDA BILL

City of Black Diamond  
Post Office Box 599  
Black Diamond, WA 98010

ITEM INFORMATION			
<b>SUBJECT:</b>  <b>Resolution No. 09-590, authorizing execution of the Villages MPD Pre-Application Agreement</b>	<b>Agenda Date: April 16 , 2009</b>		<b>AB09-034</b>
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		<b>X</b>
	City Administrator –Gwen Voelpel		
	City Attorney – Loren D. Combs	<b>X</b>	
	City Clerk – Brenda L. Streepy		
	Finance – May Miller		
	Public Works – Seth Boettcher		
	Economic Devel. – Andy Williamson		
	Police – Jamey Kiblinger		
Cost Impact:	Court – Kaaren Woods		
Fund Source:	Community Devel. – Steve Pilcher		
Timeline: 2009	Natural Resources – Aaron Nix		
<b>Attachments: Resolution No. 09-590 ; Villages MPD Pre-Application Agreement</b>			
<b>SUMMARY STATEMENT:</b>  BD Villages Partners has advised the City that it intends to utilize the early application process allowed by Ordinance 08-885 in order to submit an MPD application for a development to be known as The Villages MPD. The City entered into an agreement entitled the City of Black Diamond Staff and Facilities Funding Agreement (“Core Funding Agreement”), which provided for the funding for needed City staff and other related items. The purpose of this resolution and related agreement is: 1) to provide for clarity on the interrelationship between the City’s fee resolution, the MPD Code, and the Core Funding Agreement; and 2) to allow for the early processing of the Lawson MPD application, as authorized by City Ordinance 08-885.			
<b>COMMITTEE REVIEW AND RECOMMENDATION:</b>			
<b>RECOMMENDED ACTION: MOTION to adopt Resolution No. 09-590, authorizing the Mayor to execute the Villages MPD Pre-Application Agreement.</b>			
<b>RECORD OF COUNCIL ACTION</b>			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	

RESOLUTION NO. 09-590

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BLACK DIAMOND, KING COUNTY, WASHINGTON,  
AUTHORIZING THE MAYOR TO SIGN THE VILLAGES MPD  
PRE-APPLICATION AGREEMENT BETWEEN THE CITY OF  
BLACK DIAMOND AND BD VILLAGE PARTNERS, LP

WHEREAS, the City of Black Diamond ("City"), Palmer Coking Coal Company ("Palmer"), King County and others were parties to the Black Diamond Urban Growth Area Agreement dated December 31, 1996 ("BDUGAA"); and

WHEREAS, in order to implement the BDUGAA provisions the City is developing a new set of development regulations and planning documents; and

WHEREAS, the City imposed a moratorium on certain types of development while the City was updating its regulations in order to assure that development would not vest to old standards, and thus thwart the intent and purpose of the BDUGAA; and

WHEREAS, the City is nearing completion of the process to adopt new policies and regulations and amend old ones in order to fully implement the BDUGAA provisions; and

WHEREAS, certain large scale developments identified in City regulations as Master Planned Developments ("MPD"), involve large tracts of land and, because of their size and the complexity of the projects, will require a significant amount of time to process; and

WHEREAS, the City, in order to allow the expeditious, yet thorough processing of MPD applications, determined that it would be beneficial to allow MPD applications to be submitted prior to the completion of the City code and policy updates, so that the City staff could familiarize themselves with the applications' general development concepts, so long as the application did not vest to the old development standards. The City provided for this early processing by adopting Ordinance 08-885; and

WHEREAS, Village Partners has advised the City that it intends to utilize the early application process allowed by Ordinance 08-885 to submit an MPD application for a development to be known as the Villages MPD; and

WHEREAS, the City entered into an agreement entitled the City of Black Diamond Staff and Facilities Funding Agreement ("Core Funding Agreement"), which provided for the funding for needed City staff and other related items; and

WHEREAS, the agreement that will be approved by the adoption of this resolution will:  
1) provide clarity on the interrelationship between the City's fee resolution, the MPD Code, and the Core Funding Agreement; and 2) allow the early processing of the Villages MPD application, as authorized by City Ordinance 08-885;

WHEREAS, the Council has reviewed the Villages MPD Pre-Application Agreement and finds it is in the best interests of the City and its citizens to authorize the Mayor to execute the Agreement; now, therefore

BE IT RESOLVED that the City Council hereby authorizes the Mayor to execute the Villages MPD Pre-Application Agreement, in substantially the form attached hereto.

ADOPTED by the City Council at an open meeting on the 16th day of April, 2009.

---

Howard Botts, Mayor

Attest:

---

Brenda L. Streepy, City Clerk

## VILLAGES MPD PRE-APPLICATION AGREEMENT

1. **Date and Parties.** This document, entitled BD Village Partners, LP MPD Pre-Application Agreement ("Agreement") is dated the \_\_\_\_ day of \_\_\_\_\_ 2009, and is entered into by and between BD Village Partners, LP ("Village Partners") and the City of Black Diamond ("City"), a Washington municipal corporation.

2. **General Recitals and Agreement Purpose.**

2.1 The City, Palmer, King County and others were parties to the Black Diamond Urban Growth Area Agreement dated December 31, 1996 ("BDUGAA").

2.2 In order to implement the BDUGAA provisions the City is developing a new set of development regulations, policies, and planning documents.

2.3 The City imposed a moratorium on certain types of land use activity while the City was updating its regulations in order to assure that development would not vest to old standards, and thus thwart the intent and purpose of the BDUGAA.

2.4 The City is nearing completion of the process to adopt new policies and regulations and amend old ones in order to fully implement the BDUGAA provisions.

2.5 Certain large scale developments identified in City regulations as Master Planned Developments ("MPD"), involve large tracts of land and, because of their size and the complexity of the projects, will require a significant amount of time to process.

2.6 The City, in order to allow the expeditious, yet thorough processing of MPD applications, determined that it would be beneficial to allow MPD applications to be submitted prior to the completion of the City code and policy updates, so that the City staff could familiarize themselves with the applications general development concepts, so long as the application did not vest to the old development standards. The City provided for this early processing by adopting Ordinance 08-885.

2.7 Village Partners has advised the City that it intends to utilize the early application process allowed by Ordinance 08-885 to submit an MPD application for a development to be known as the Villages MPD.

2.8 The BDUGAA provisions set forth the general framework for the annexation of certain properties identified in the BDUGAA, and referenced herein, as the South Annexation Area, the West Annexation Area, and the East Annexation Area. The West and South Annexation Areas are intended to be included within the Villages MPD. The West Annexation has already occurred.

2.9 The City entered into an agreement entitled the City of Black Diamond Staff and Facilities Funding Agreement (“Core Funding Agreement”), which provided for the funding for needed City staff and other related items.

2.10 This agreement will: 1) provide clarity on the interrelationship between the City’s fee resolution, the MPD Code, and the Core Funding Agreement; 2) allow the early processing of the Villages MPD application, as authorized by City Ordinance 08-885; and 3) define the relationship between the finalization of the South Annexation process and the hearings on the Villages MPD application.

### 3. **South Annexation.**

3.1 The City agrees to commence processing the Villages MPD application, which will include the South Annexation Area, prior to completion of the annexation process for the South Annexation Area. The public hearings on the Villages MPD Application shall not be scheduled until the South Annexation Area has been annexed into the City, and any appeals finalized.

3.2 A request to commence the annexation process for the South Annexation Area has been received by the City. The parties agree that before the City authorizes the circulation of the petition to annex the South Annexation Area, the parties shall negotiate a pre-annexation agreement that will provide for the implementation of the remaining BDUGAA conditions relative to annexation of the South Annexation Area so that the pre-annexation agreement can be integrated into the annexation process at the time the circulation of the petition to annex is authorized. The parties agree to immediately commence negotiating the pre-annexation agreement. Village Partners waives the requirement in RCW 35A.14.120 that a meeting with the initiating parties must be held within 60 days of submitting the notice of intent to annex. The City agrees that since the petition to annex will include signatures of the owners of all of the property to be annexed, that it will hold the meeting with the initiating parties and authorize the circulation of the petition in the same meeting.

3.3 The cost of processing the South Annexation shall be paid in accordance with the City’s fee resolution.

### 4. **Relationship of Core Funding Agreement to City’s Fee Resolution for MPD Processing.**

4.1 The Core Funding Agreement provides a funding mechanism, funded by BD Lawson Partners, L.P. and BD Village Partners, LP, for needed City staff and City facilities and equipment until such time as the City can independently provide funding for those costs. It also provides that the City shall not charge for City staff time used in reviewing and processing a land use application that is otherwise being paid for pursuant to the Core Funding Agreement provisions. It is the City’s intent that all applicants for land use entitlements shall be treated the same, and pay the same fees.

4.2 The City shall designate for City staff whose salaries and overhead are funded by the Core Funding Agreement, what percentage of their time will be allocated to

processing MPD applications. That percentage of the total amount paid for their salary and overhead, shall then be deducted from the amount that is funded by the Core Funding Agreement. Any time that those employees then spend on processing an MPD application shall be charged to the particular MPD application in accordance with the City's fee resolution and the City's MPD ordinance.

4.3 Although the Core Funding Agreement provisions relating to non-duplicative payments only applies to land use applications, and an annexation is not a land use application, since the annexation is also inextricably linked to the MPD land use application the staff time associated with the South Annexation shall also be subject to the provisions of paragraph 4.2.

4.4 The MPD application shall be processed in accordance with the City's fee resolution and MPD ordinance. Provided, in lieu of the amount of the required deposit being the estimated cost to process the application, the parties agree that the deposit amount shall be \$25,000, and the security provided in the Core Funding Agreement for payment of amounts owed to the City shall also serve as security for the payment of any amounts to become due and owing to the City as a result of the MPD application process.

5. **MPD Vesting.**

5.1 This section 5 shall apply to any MPD application that is submitted by any party hereto and/or for lands owned by a party hereto, while the moratorium imposed by City Ordinance 08-885, or any extension thereof, remains in effect.

5.2 The MPD application shall vest to the City policies, standards, application requirements, and land use regulations in effect on the date the moratorium referenced in paragraph 5.1 is lifted or otherwise expires ("Vested Standards").

5.3 The applicant and landowner of land included in the MPD application, assume the risk that the City policies and development regulations to which they will vest will be significantly different than the policies and development regulations in effect on the date they submit their application, including the loss of some land use activity or densities that might have otherwise been permitted under the existing regulations.

5.4 The applicant, at its expense, will modify its MPD application, as necessary, in order to meet the Vested Standards. If the applicant concludes, after reviewing its application in accordance with the provisions of the Vested Standards, that it believes no modifications to its application is necessary, then it shall notify the City, in writing that it does not intend to modify its application. Otherwise, it will notify the City that it intends to modify its application in order to comply with the Vested Standards.

5.5 The MPD application date shall be either the date that the applicant provides the City with the notice referenced in paragraph 5.4 that it does not intend to amend its application, or when the applicant submits its modified application referenced in paragraph 5.4 ("MPD Application Date").

5.6 The City shall commence its review of the MPD application upon receipt, even though some of that review may be of application materials that will have to be modified after the MPD Application Date, resulting in additional charges to the applicant. The applicant will be responsible for these additional costs as application costs under the City's fee resolution and MPD ordinance.

5.7 The City shall not commence its review of the application as to whether or not it is a complete application until the MPD Application Date. The application shall vest to the applicable City policies, standards and development regulations in effect on the date a complete application, as defined in the MPD ordinance in effect on the MPD Application Date, is submitted.

6. **Amendments.** Any party may request changes to this Agreement. Proposed changes that are agreed upon by all parties will be incorporated by written amendments to this Agreement.

7. **Integration.** The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Waiver of any default will not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the Agreement will not be deemed to be a waiver of any other or subsequent breach and will not be construed to be a modification of the terms of the Agreement unless stated to be such through written approval by the party charged with so waiving or modifying the terms of the Agreement, which written approval will be attached to the original Agreement.

8. **Negotiation and Drafting.** The parties hereby acknowledge that this Agreement has been reached as a result of arms length negotiations with each party represented by counsel. No presumption shall arise as a result of one party or the other having drafted all or any portion of this Agreement.

9. **Counterparts.** This Agreement may be executed by the parties in counterparts, each of which, when executed shall be deemed an original instrument and binding against the party signing thereon.

10. **Severability.** If any section, sentence, clause, or portion of this Agreement is declared unlawful or unconstitutional for any reason, the remainder of this Agreement shall continue in full force and effect.

11. **Authority to Sign.** Each party represents and warrants to the others that the individuals signing below have full power, authority and legal right to execute and deliver this Agreement and thereby to legally bind the party on whose behalf such person signed.

12. **Binding Effect on Subsequent Parties.** This Agreement shall bind and inure to the benefit of the parties and their respective receivers, trustees, insurers, successors, subrogees, transferees and assigns.

13. **Notice.** Any demand, request or notice which either party hereto desires or may be required to make or deliver to the other shall be in writing and shall be deemed given when personally delivered, or successfully transmitted by facsimile transmission, or when actually received after being deposited in the United States Mail in registered or certified form, return receipt requested, addressed as follows

To the City: Gwendolyn Voelpel, City Administrator  
City of Black Diamond  
25510 Lawson St.  
PO Box 599  
Black Diamond, WA 98010  
Facsimile: (360) 886-2592

Loren Combs  
VSI Law Group, PLLC  
3600 Port of Tacoma Road, Suite 311  
Tacoma, WA 98424  
Facsimile: (253) 922-5848

To Village Partners: Brian Ross  
BD Village Partners, LP  
825 5<sup>th</sup> Ave., Suite 202  
Kirkland, WA 98033  
Facsimile: (425) 202-3694

John Hempelmann  
Cairncross & Hempelmann, P.S.  
524 Second Avenue, Suite 500  
Seattle, Washington 98104-2323  
Facsimile: (206) 587-2308

14. **Choice of Law, Jurisdiction, and Venue.** This Agreement shall be interpreted, construed, and enforced according to the laws of the State of Washington. If any action is brought by any of the parties to enforce provisions of this Agreement, the parties agree that the exclusive jurisdiction and venue of any lawsuit arising from such action will be the Superior Court of Washington for King County.

15. **Mediation, Attorneys' Fees and Costs.** In the event of any dispute concerning this Agreement, the parties agree to submit their dispute to a mutually-agreed mediator before seeking recourse from any court. In the event that mediation fails to resolve the dispute, the substantially prevailing party shall be entitled to receive its attorneys' fees and costs at trial, at any alternative dispute resolution proceeding, and on appeal.



CITY OF BLACK DIAMOND

BD VILLAGE COMMUNITIES  
BD Village Partners, LP

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Howard Botts, Mayor

Attest:

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By: Brian Ross  
Title: Managing Partner

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Brenda Streepy, City Clerk

Approved as to form:

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Loren D. Combs, City Attorney

# CITY COUNCIL AGENDA BILL

City of Black Diamond  
Post Office Box 599  
Black Diamond, WA 98010

ITEM INFORMATION			
<b>SUBJECT:</b> <b>Resolution No. 09-591,</b> <b>authorizing execution of the</b> <b>Lawson Hills Master Planned</b> <b>Development Pre-Application</b> <b>Agreement</b>	<b>Agenda Date: April 16, 2009</b>		<b>AB09-035</b>
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		X
	City Administrator –Gwen Voelpel		
	City Attorney – Loren D. Combs	X	
	City Clerk – Brenda L. Streepy		
	Finance – May Miller		
	Public Works – Seth Boettcher		
	Economic Devel. – Andy Williamson		
	Police – Jamey Kiblinger		
Cost Impact: None	Court – Kaaren Woods		
Fund Source: N/A	Community Devel. – Steve Pilcher		
Timeline: 2009	Natural Resources – Aaron Nix		
<b>Attachments: Resolution No. 09-591, Lawson Hills MPD Pre-Application Agreement</b>			
<b>SUMMARY STATEMENT:</b>  BD Lawson Partners has advised the City that it intends to utilize the early application process allowed by Ordinance 08-885 in order to submit a Master Planned Development (MPD) application for a development to be known as The Lawson Hills MPD. The City entered into an agreement entitled the City of Black Diamond Staff and Facilities Funding Agreement (“Core Funding Agreement”), which provided for the funding for needed City staff and other related items. The purpose of this resolution and related agreement is: 1) to provide for clarity on the interrelationship between the City’s fee resolution, the MPD Code, and the Core Funding Agreement; and 2) to allow for the early processing of the Lawson Hills MPD application, as authorized by City Ordinance 08-885.			
<b>COMMITTEE REVIEW AND RECOMMENDATION:</b>			
<b>RECOMMENDED ACTION: MOTION to adopt Resolution No. 09-591, authorizing the Mayor to execute the Lawson Hills MPD Pre-Application Agreement.</b>			
<b>RECORD OF COUNCIL ACTION</b>			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
April 16, 2009			

RESOLUTION NO. 09-591

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BLACK DIAMOND, KING COUNTY, WASHINGTON,  
AUTHORIZING THE MAYOR TO SIGN THE LAWSON HILLS  
MPD PRE-APPLICATION AGREEMENT BETWEEN THE CITY  
OF BLACK DIAMOND, PALMER COKING COAL COMPANY  
AND BD LAWSON PARTNERS, LP

WHEREAS, the City of Black Diamond (“City”), Palmer Coking Coal Company (“Palmer”), King County and others were parties to the Black Diamond Urban Growth Area Agreement dated December 31, 1996 (“BDUGAA”); and

WHEREAS, in order to implement the BDUGAA provisions the City is developing a new set of development regulations and planning documents; and

WHEREAS, the City imposed a moratorium on certain types of development while the City was updating its regulations in order to assure that development would not vest to old standards, and thus thwart the intent and purpose of the BDUGAA; and

WHEREAS, the City is nearing completion of the process to adopt new policies and regulations and amend old ones in order to fully implement the BDUGAA provisions; and

WHEREAS, certain large scale developments identified in City regulations as Master Planned Developments (“MPD”), involve large tracts of land and, because of their size and the complexity of the projects, will require a significant amount of time to process; and

WHEREAS, the City, in order to allow the expeditious, yet thorough processing of MPD applications, determined that it would be beneficial to allow MPD applications to be submitted prior to the completion of the City code and policy updates, so that the City staff could familiarize themselves with the applications’ general development concepts, so long as the application did not vest to the old development standards. The City provided for this early processing by adopting Ordinance 08-885; and

WHEREAS, Lawson has advised the City that it intends to utilize the early application process allowed by Ordinance 08-885 to submit an MPD application for a development to be known as the Lawson Hills MPD. The proposed Lawson Hills MPD area includes property owned by Lawson and property owned by Palmer but under option to purchase by Lawson; and

WHEREAS, the City entered into an agreement entitled the City of Black Diamond Staff and Facilities Funding Agreement (“Core Funding Agreement”), which provided for the funding for needed City staff and other related items; and

WHEREAS, the agreement that will be approved by the adoption of this resolution will:  
1) provide clarity on the interrelationship between the City’s fee resolution, the MPD Code, and the Core Funding Agreement; and 2) allow the early processing of the Lawson Hills MPD application, as authorized by City Ordinance 08-885;

WHEREAS, the Council has reviewed the Lawson Hills MPD Pre-Application Agreement and finds it is in the best interests of the City and its citizens to authorize the Mayor to execute the Agreement; now, therefore

BE IT RESOLVED that the City Council hereby authorizes the Mayor to execute the Lawson Hills MPD Pre-Application Agreement, in substantially the form attached hereto.

ADOPTED by the City Council at an open meeting on the 16th day of April, 2009.

---

Howard Botts, Mayor

Attest:

---

Brenda L. Streepy, City Clerk

## LAWSON HILLS MPD PRE-APPLICATION AGREEMENT

1. **Date and Parties.** This document, entitled Lawson Hills MPD Pre-Application Agreement ("Agreement"), is dated the \_\_\_\_ day of \_\_\_\_\_ 2009, and is entered into by and between BD Lawson Partners, LP ("Lawson"), Palmer Coking Coal Company, ("Palmer") and the City of Black Diamond ("City"), a Washington municipal corporation.

2. **General Recitals and Agreement Purpose.**

2.1 The City, Palmer, King County and others were parties to the Black Diamond Urban Growth Area Agreement dated December 31, 1996 ("BDUGAA").

2.2 In order to implement the BDUGAA provisions the City is developing a new set of development regulations, policies, and planning documents.

2.3 The City imposed a moratorium on certain types of land use activity while the City was updating its regulations in order to assure that development would not vest to old standards, and thus thwart the intent and purpose of the BDUGAA.

2.4 The City is nearing completion of the process to adopt new policies and regulations and amend old ones in order to fully implement the BDUGAA provisions.

2.5 Certain large scale developments identified in City regulations as Master Planned Developments ("MPD"), involve large tracts of land and, because of their size and the complexity of the projects, will require a significant amount of time to process.

2.6 The City, in order to allow the expeditious, yet thorough processing of MPD applications, determined that it would be beneficial to allow MPD applications to be submitted prior to the completion of the City code and policy updates, so that the City staff could familiarize themselves with the applications general development concepts, so long as the application did not vest to the old development standards. The City provided for this early processing by adopting Ordinance 08-885.

2.7 Lawson has advised the City that it intends to utilize the early application process allowed by Ordinance 08-885 to submit an MPD application for a development to be known as the Lawson Hills MPD. The proposed Lawson Hills MPD area includes property owned by Lawson and also property owned by Palmer that is under option to purchase by Lawson, the Palmer property being legally described in Exhibit A attached hereto and by reference incorporated herein.

2.8 The BDUGAA provisions set forth the general framework for the annexation of certain properties identified in the BDUGAA, and referenced herein, as the South

Annexation Area, the West Annexation Area, and the East Annexation Area. The East Annexation Area is intended to be included within the Lawson Hills MPD.

2.9 The City entered into an agreement entitled the City of Black Diamond Staff and Facilities Funding Agreement (“Core Funding Agreement”), which provided for the funding for needed City staff and other related items.

2.10 This agreement will: 1) provide clarity on the interrelationship between the City’s fee resolution, the MPD Code, and the Core Funding Agreement; 2) allow the early processing of the Lawson Hills MPD application, as authorized by City Ordinance 08-885; and 3) define the relationship between the finalization of the East Annexation process and the hearings on the Lawson Hills MPD application.

### 3. **East Annexation.**

3.1 The City agrees to commence processing the Lawson MPD application, which will include the East Annexation Area, prior to completion of the annexation process for the East Annexation Area. The public hearings on the Lawson MPD Application shall not be commenced until the East Annexation Area has been annexed into the City, and any appeals finalized.

3.2 A request to commence the annexation process for the East Annexation Area has been received by the City. The parties agree that before the City authorizes the circulation of the petition to annex the East Annexation Area, the parties shall negotiate a pre-annexation agreement that will provide for the implementation of the remaining BDUGAA conditions relative to annexation of the East Annexation Area so that the pre-annexation agreement can be integrated into the annexation process at the time the circulation of the petition to annex is authorized. The parties agree to immediately commence negotiating the pre-annexation agreement. Lawson and Palmer waive the requirement in RCW 35A.14.120 that a meeting with the initiating parties must be held within 60 days of submitting the notice of intent to annex. The City agrees that since the petition to annex will include signatures of the owners of all of the property to be annexed, that it will hold the meeting with the initiating parties and authorize the circulation of the petition in the same meeting.

3.3 The cost of processing the East Annexation shall be paid in accordance with the City’s fee resolution.

### 4. **Relationship of Core Funding Agreement to City’s Fee Resolution for MPD Processing.**

4.1 The Core Funding Agreement provides a funding mechanism, funded by BD Lawson Partners, L.P. and BD Village Partners, LP, for needed City staff and City facilities and equipment until such time as the City can independently provide funding for those costs. It

also provides that the City shall not charge for City staff time used in reviewing and processing a land use application that is otherwise being paid for pursuant to the Core Funding Agreement provisions. It is the City's intent that all applicants for land use entitlements shall be treated the same, and pay the same fees.

4.2 The City shall designate for those City staff whose salaries and overhead are funded by the Core Funding Agreement, what percentage of their time will be allocated to processing MPD applications. That percentage of the total amount paid for their salary and overhead shall then be deducted from the amount that is funded by the Core Funding Agreement. Any time that those employees then spend on processing an MPD application shall be charged to the particular MPD application in accordance with the City's fee resolution and the City's MPD ordinance.

4.3 Although the Core Funding Agreement provisions relating to non-duplicative payments only applies to land use applications, and an annexation is not a land use application, since the East Annexation is also inextricably linked to the MPD land use application the staff time associated with the East Annexation shall also be subject to the provisions of paragraph 4.2.

4.4 The MPD application shall be processed in accordance with the City's fee resolution and MPD ordinance. Provided, in lieu of the amount of the required deposit being the estimated cost to process the application, the parties agree that the deposit amount shall be \$25,000, and the security provided in the Core Funding Agreement for payment of amounts owed to the City shall also serve as security for the payment of any amounts to become due and owing to the City as a result of the MPD application process.

## 5. **MPD Vesting.**

5.1 This section 5 shall apply to any MPD application that is submitted by any party hereto and/or for lands owned by a party hereto, while the moratorium imposed by City Ordinance 08-885, or any extension thereof, remains in effect.

5.2 The MPD application shall vest to the City policies, standards, application requirements, and land use regulations in effect on the date the moratorium referenced in paragraph 5.1 is lifted or otherwise expires ("Vested Standards").

5.3 The applicant and landowners of land included in the MPD application, assume the risk that the City policies and development regulations to which they will vest will be significantly different than the policies and development regulations in effect on the date they submit their application, including the loss of some land use activity or densities that might have otherwise been permitted under the existing regulations.

5.4 The applicant, at its expense, will modify its MPD application, as necessary, in order to meet the Vested Standards. If the applicant concludes, after reviewing its application in accordance with the provisions of the Vested Standards, that it believes no modifications to its application is necessary, then it shall notify the City, in writing, that it does not intend to modify its application. Otherwise, it will notify the City that it intends to modify its application in order to comply with the Vested Standards.

5.5 The MPD application date shall be either the date that the applicant provides the City with the notice referenced in paragraph 5.4 that it does not intend to amend its application, or when the applicant submits its modified application referenced in paragraph 5.4 ("MPD Application Date").

5.6 The City shall commence its review of the MPD application upon receipt, even though some of that review may be of application materials that will have to be modified after the MPD Application Date, resulting in additional charges to the applicant. The applicant will be responsible for these additional costs as application costs under the City's fee resolution and MPD ordinance.

5.7 The City shall not commence its review of the application as to whether or not it is a complete application until the MPD Application Date. The application shall vest to the applicable City policies, standards and development regulations in effect on the date a complete application, as defined in the MPD ordinance in effect on the MPD Application Date, is submitted.

6. **Amendments.** Any Party may request changes to this Agreement. Proposed changes that are agreed upon by all parties will be incorporated by written amendments to this Agreement.

7. **Integration.** The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Waiver of any default will not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the Agreement will not be deemed to be a waiver of any other or subsequent breach and will not be construed to be a modification of the terms of the Agreement unless stated to be such through written approval by the Party charged with so waiving or modifying the terms of the Agreement, which written approval will be attached to the original Agreement.

8. **Negotiation and Drafting.** The parties hereby acknowledge that this Agreement has been reached as a result of arms length negotiations with each Party represented by counsel. No presumption shall arise as a result of one Party or the other having drafted all or any portion of this Agreement.



9. **Counterparts.** This Agreement may be executed by the parties in counterparts, each of which, when executed shall be deemed an original instrument and binding against the Party signing thereon.

10. **Severability.** If any section, sentence, clause, or portion of this Agreement is declared unlawful or unconstitutional for any reason, the remainder of this Agreement shall continue in full force and effect.

11. **Authority to Sign.** Each Party represents and warrants to the others that the individuals signing below have full power, authority and legal right to execute and deliver this Agreement and thereby to legally bind the Party on whose behalf such person signed.

12. **Binding Effect on Subsequent Parties.** This Agreement shall bind and inure to the benefit of the parties and their respective receivers, trustees, insurers, successors, subrogees, transferees and assigns.

13. **Notice.** Any demand, request or notice which either party hereto desires or may be required to make or deliver to the other shall be in writing and shall be deemed given when personally delivered, or successfully transmitted by facsimile transmission, or when actually received after being deposited in the United States Mail in registered or certified form, return receipt requested, addressed as follows

To the City:                   Gwendolyn Voelpel, City Administrator  
City of Black Diamond  
25510 Lawson St.  
PO Box 599  
Black Diamond, WA 98010  
Facsimile: (360) 886-2592

Loren Combs  
VSI Law Group, PLLC  
3600 Port of Tacoma Road, Suite 311  
Tacoma, WA 98424  
Facsimile: (253) 922-5848

To Lawson:                   Brian Ross  
Lawson Group  
825 5<sup>th</sup> Ave., Suite 202  
Kirkland, WA 98033  
Facsimile: (425) 202-3694

John Hempelmann  
Cairncross & Hempelmann, P.S.  
524 Second Avenue, Suite 500  
Seattle, Washington 98104-2323  
Facsimile: (206) 587-2308

To Palmer: William Kombol  
Manager  
Palmer Coking Coal Company  
P.O. Box 10  
31407 Highway 169  
Black Diamond, WA 98010-0010  
Facsimile: (425) 432-3883

14. **Choice of Law, Jurisdiction, and Venue.** This Agreement shall be interpreted, construed, and enforced according to the laws of the State of Washington. If any action is brought by any of the parties to enforce provisions of this Agreement, the parties agree that the exclusive jurisdiction and venue of any lawsuit arising from such action will be the Superior Court of Washington for King County.

15. **Mediation, Attorneys' Fees and Costs.** In the event of any dispute concerning this Agreement, the parties agree to submit their dispute to a mutually-agreed mediator before seeking recourse from any court. In the event that mediation fails to resolve the dispute, the substantially prevailing Party shall be entitled to receive its attorneys' fees and costs at trial, at any alternative dispute resolution proceeding, and on appeal.

CITY OF BLACK DIAMOND

LAWSON COMMUNITIES  
For BD Lawson Partners, LP

\_\_\_\_\_  
Howard Botts, Mayor

\_\_\_\_\_  
By: Brian Ross  
Title: Managing Partner

Attest:

PALMER COKING COAL COMPANY, a  
Washington General Partnership

\_\_\_\_\_  
Brenda Streepy, City Clerk

By: \_\_\_\_\_  
By: William Kombol  
Its: Manager

Approved as to form:

\_\_\_\_\_  
Loren D. Combs, City Attorney

# CITY COUNCIL AGENDA BILL

City of Black Diamond  
Post Office Box 599  
Black Diamond, WA 98010

ITEM INFORMATION			
<b>SUBJECT:</b>  <b>Ordinance No. 09-897, adopting amendments to Chapter 18.98 Black Diamond Municipal Code concerning Master Planned Developments</b>	<b>Agenda Date: April 16, 2009</b>		<b>AB09-036</b>
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		
	City Administrator –Gwen Voelpel		<b>X</b>
	City Attorney – Loren D. Combs		<b>X</b>
	City Clerk – Brenda L. Streepy		
	Finance – May Miller		
	Public Works – Seth Boettcher		
	Economic Devel. – Andy Williamson		
	Comm. Devel. – Steve Pilcher	<b>X</b>	
Cost Impact: N/A	Court – Kaaren Woods		
Fund Source: N/A	Natural Resources/Parks – Aaron Nix		
Timeline: N/A			
<b>Attachments: Ordinance No. 09-897, Draft Amendments to Chapter 18.98, Master Planned Developments</b>			
<b>SUMMARY STATEMENT:</b>  <p>Amending the existing Master Planned Development Ordinance (Chapter 18.98) is another step that needs to occur prior to the MPD moratorium being lifted. The City Attorney's office and staff worked through several drafts of proposed changes before they were presented to the Planning Commission in December. At the Commission's public hearing in December, Yarrow Bay presented a letter and lengthy list of issues it wished to have considered (there was no other public comment). The Commission continued the hearing to allow time for staff to review the letter and then made their recommendation of approval in January.</p> <p>Council conducted a hearing on this matter on February 26<sup>th</sup>; held a subsequent workstudy to discuss issues with Yarrow Bay on March 12<sup>th</sup>; and then provided clarification on the issue of maximum allowable density at its April 2<sup>nd</sup> meeting. The Ordinance being presented for your consideration includes new language addressing maximum allowable density (sec. 18.98.120).</p>			
<b>COMMITTEE REVIEW AND RECOMMENDATION: Planning Commission: approval</b>			
<b>RECOMMENDED ACTION: MOTION to adopt Ordinance 09-897, amending Chapter 18.98, Master Planned Developments.</b>			
<b>RECORD OF COUNCIL ACTION</b>			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
April 16, 2009			

ORDINANCE NO. 09-897

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, AMENDING CHAPTER 18.98 OF THE BLACK DIAMOND MUNICIPAL CODE TO UPDATE THE PROCEDURES, REQUIREMENTS, AND STANDARDS RELATING TO APPLICATION FOR, APPROVAL OF, AND AMENDMENT TO THE CONDITIONS ATTACHED TO A MASTER PLANNED DEVELOPMENT**

WHEREAS, thoughtful regulation of master planned developments is especially important because of the significant impact such a development has on the existing density and character of the area being developed; and

WHEREAS, in recognition of this fact, the City of Black Diamond had previously enacted chapter 18.98 of the municipal code to create a set of guidelines and requirements governing master planned developments; and

WHEREAS, after having worked with the existing provisions of chapter 18.98 for several years, city staff identified some additional issues and concerns that needed to be addressed and also certain provisions that needed clarifying or amending; and

WHEREAS, the resulting additions and amendments to chapter 18.98 contained in this ordinance should ensure that each master planned development application is treated consistently and evaluated fairly and that the terms and conditions placed on any development approvals shall further the long-term vision of the City of Black Diamond as a livable, vibrant, desirable community in which to live and work.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Chapter 18.98 of the Black Diamond Municipal Code (“Master Planned Development”) is hereby amended to read as shown on Exhibit “A,” which is incorporated to this ordinance by reference.

Section 2. Severability. Each and every provision of this Ordinance shall be deemed severable. In the event that any portion of this Ordinance is determined by final order of a court of competent jurisdiction to be void or unenforceable, such determination shall not affect the validity of the remaining provisions thereof, provided the intent of this Ordinance can still be furthered without the invalid provision.

Section 3. Effective date. This Ordinance shall be in full force and effect five (5) days after publication as required by law. A summary of this Ordinance may be published in lieu of the entire Ordinance, as authorized by State law.

Introduced on the 16th day of April, 2009.

Passed by the City Council on the 16th day of April, 2009.

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Mayor Howard Botts

ATTEST:

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Brenda L. Streepy, City Clerk

APPROVED AS TO FORM:

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Loren D. Combs, City Attorney

Published: \_\_\_\_\_

Effective Date: \_\_\_\_\_

Chapter 18.98  
MASTER PLANNED DEVELOPMENT

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18.98.005 MPD zoning district created.

18.98.010 Master planned development (MPD) permit—Purpose.

18.98.020 MPD permit—Public benefit objectives.

18.98.030 MPD permit—Criteria for MPD eligibility.

18.98.040 MPD permit—Application requirements.

18.98.050 MPD permit—Required approvals.

18.98.060 MPD permit—Review process.

18.98.070 MPD permit—Environmental review (SEPA).

18.98.080 MPD permit—Conditions of approval.

18.98.090 MPD permit—Development agreement.

18.98.100 MPD permit—Amendments to an approved MPD permit.

18.98.110 MPD standards—Design review required.

18.98.120 MPD standards—Permitted uses and densities.

18.98.130 MPD standards—Development standards.

18.98.140 MPD standards—Open space requirements.

18.98.150 MPD standards—On-site recreation and trail requirements.

18.98.155 MPD standards – Sensitive Areas Requirements.

18.98.160 MPD standards—Transfer of development rights.

18.98.170 MPD standards—Street standards.

18.98.180 MPD standards—Stormwater management standards.

18.98.190 MPD standards—Water and sewer standards.

18.98.195 Vesting.

18.98.200 Revocation of MPD permit.

18.98.005 MPD zoning district created.

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The master plan development (MPD) zoning district is created. No development activity may occur, or any application accepted for processing, on property subject to an MPD zoning designation, or for which the submittal of an MPD is required by a development agreement, unless it is done in accordance with the terms and conditions of a valid MPD permit or consistent with this chapter. Development activity shall include, but not be limited to, grading, clearing, filling, tree harvesting, platting, short platting, building or any other activity for which a city permit or other approval is required. (Ord. 796 § 1, 2005)

#### 18.98.010 Master planned development (MPD) permit - Purpose.

The purposes of the master planned development (MPD) permit process and standards set out in this chapter are to:

- A. Establish a public review process for MPD applications;
- B. Establish a comprehensive review process for development projects occurring on parcels or combined parcels greater than eighty acres in size;
- C. Preserve passive open space and wildlife corridors in a coordinated manner while also preserving usable open space lands for the enjoyment of the city's residents;
- D. Allow alternative, innovative forms of development and encourage imaginative site and building design and development layout with the intent of retaining significant features of the natural environment;
- E. Allow flexibility in development standards and permitted uses;
- F. Identify significant environmental impacts, and ensure appropriate mitigation;
- G. Provide greater certainty about the character and timing of residential and commercial development and population growth within the city;
- H. Provide environmentally sustainable development;
- I. Provide needed services and facilities in an orderly, fiscally responsible manner;
- J. Promote economic development and job creation in the city;
- K. Create vibrant mixed-use neighborhoods, with a balance of housing, employment, civic and recreational opportunities;
- L. Promote and achieve the city's vision of incorporating and/or adapting the planning and design principles regarding mix of uses, compact form, coordinated open space, opportunities for casual socializing, accessible civic spaces, and sense of community; as well as such additional design principles as may be appropriate for a particular MPD, all as identified in the book *Rural By Design* by Randall Arendt and in the City's design standards;
- M. Implement the city's vision statement, comprehensive plan, and other applicable goals, policies and objectives set forth in the municipal code. (Ord. 779 § 2 Exh. 1 (part), 2005)

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#### 18.98.020 MPD permit - Public benefit objectives.

A specific objective of the MPD permit process and standards is to provide public benefits not typically available through conventional development. These public benefits shall include but are not limited to:

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- A. Preservation and enhancement of the physical characteristics (topography, drainage, vegetation, environmentally sensitive areas, etc.) of the site;
- B. Protection of surface and groundwater quality both on-site and downstream, through the use of innovative, low-impact and regional stormwater management technologies;
- C. Conservation of water and other resources through innovative approaches to resource and energy management including measures such as wastewater reuse;
- D. Preservation and enhancement of open space and views of Mt. Rainier;
- E. Provision of employment uses to help meet the city's economic development objectives;
- F. Improvement of the city's fiscal performance;
- G. Timely provision of all necessary facilities, infrastructure and public services, equal to or exceeding the more stringent of either existing or adopted levels of service, as the MPD develops; and
- H. Development of a coordinated system of pedestrian oriented facilities including, but not limited to, trails and bike paths that provide accessibility throughout the MPD and provide opportunity for connectivity with the city as a whole. (Ord. 779 § 2 Exh. 1 (part), 2005)

#### 18.98.030 MPD permit - Criteria for MPD eligibility.

A. Where Required. An MPD permit shall be required for any development where:

1. Any of the property within the development is subject to an MPD overlay designation on the Comprehensive Plan Future Land Use Map or an MPD zoning designation;

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2. The parcel or combined parcels to be included in a development total at least eighty gross acres; or

3. Any of the property within the development is subject to a development agreement that requires an MPD permit to be obtained.

4. Provided, however, the above provisions notwithstanding, any commercial area that is intended to be used to meet the economic objectives of an MPD and is geographically separated from the residential component of a proposed MPD may be approved through the site plan approval process of Chapter 18.16, subject to the following conditions:

a. the commercial area is included in an MPD application that has been determined to be complete and is identified in the application as being intended to meet the economic objectives of the MPD application;

b. The MPD design and development standards shall be applied, unless modified in accordance with the provisions of section 18.98.130(A);

c. the approved conditions shall include the requirements of section 18.98.080(A);

d. if the environmental review on the MPD permit application has not been completed, then, if determined appropriate, an environmental determination may be issued for the commercial area, provided the determination contains provisions that the commercial area shall still be considered for cumulative impact purposes, and appropriate additional mitigation requirements in the environmental review for the MPD application.

e. the provisions of the subsequent MPD approval shall apply to the site plan approval, including vesting, but only to the extent that they do not adversely impact

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complete building applications that have been submitted, or on site infrastructure improvements that have already been permitted.

B. Eligibility. Where not required under subsection A of this section the city may accept an MPD permit application, and process a development proposal as an MPD, only for contiguous properties that

are in a single ownership, or if in multiple ownerships, specific agreements satisfactory to the city shall be signed by each property owner that place the properties under unified control, and bind all owners to the MPD conditions of approval.

2. All properties within its proposed MPD are within the city limits or within the PAA provided that, if a proposed MPD includes lands within the PAA, approval of the entire MPD will not be granted until such time annexation of unincorporated lands is completed. C. Contiguity. All properties to be included in an MPD must be contiguous, excepting those areas intended to be used for commercial purposes, other than neighborhood commercial. (Ord. 796 § 2, 2005; Ord. 779 § 2 Exh. 1 (part), 2005)

#### 18.98.040 MPD permit - Application requirements.

A. Application Requirements. All applications for approval of an MPD permit shall, at a minimum, include all of the information and documents set forth in this section.

1. A set of master plan drawings, drawn at a scale as determined by the director, showing:

a. Proposed open space, parks, recreation areas, trail networks, wildlife corridors, and perimeter buffers, and the intended ownership and acreage for each area;

b. Existing environmentally sensitive areas and their buffers, together with the reports, surveys or delineations used to identify their locations and areas for which development within a wetland, bog, stream or its related buffer is proposed and for which mitigation or buffer averaging will be required;

c. Proposed locations and preliminary street sections of all streets having a function higher than neighborhood access, and all pedestrian connections including trails; if the local access street section is intended to vary from the adopted City standard;

d. Proposed sites for schools and other public facilities required to serve the development;

e. Conceptual public utility plans (sewer, water, stormwater);

f. Types, generalized locations, acreages, and densities of proposed residential and nonresidential development;

g. Proposed sites for public transit facilities;

h. Any existing easements located upon the property;

i. Identify areas that will be protected from development by the requirements of Chapter 19.10 (Sensitive Areas Ordinance).

2. A map, drawn at a scale as determined by the director, showing property boundaries and existing topography (five-foot contour intervals), areas of vegetation by type, other natural features, and existing structures.

3. A legal description of the MPD property, together with a title report no more than thirty days old, disclosing all lien holders and owners of record.

4. A projected phasing plan and development time schedule, regardless of intended ownership, for all development, including but not limited to, housing, stormwater

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systems, sanitary sewer facilities, public water facilities, roads, trails, commercial (including required neighborhood commercial) areas, recreational facilities, and open space, including any off-site improvements.

5. A completed SEPA checklist, with various environmental studies and SEPA documents. If the city and the applicant have agreed that an environmental impact statement will be prepared for the proposal, a checklist shall not be required.

6. A comprehensive fiscal analysis disclosing the short and long-term financial impacts of the proposed MPD upon the city both during development and following project completion, including an analysis of required balance of residential and commercial land uses needed to ensure a fiscal benefit to the city after project completion, and including an analysis of personnel demands and fiscal short-falls anticipated during the development phase of the MPD together with recommended mitigations to ensure that the MPD does not negatively impact the fiscal health of the city, nor the ability of the city to adequately serve existing residents, provided that if an EIS will be prepared, the fiscal analysis may be prepared concurrently.

7. A narrative description and illustrations of the MPD planning/design concept, demonstrating how the proposed MPD is consistent with the adopted MPD design standards, the comprehensive plan, all elements of sections 18.98.010 and 18.98.020, and other applicable policies and standards. If deviations from these standards are proposed, the narrative shall describe how the proposed deviations provide an equal or greater level of public benefit.

8. Typical cross-sections of all proposed street and trail types, including landscaping, pedestrian facilities, and any other proposed improvements within the right-of-way or trail corridors.

9. A listing of all property owners of record within five hundred feet of the exterior boundaries of all parcels proposed to be included within the MPD. (When one or more of the MPD property owners own property adjacent to but not included within the MPD, the five hundred feet shall be measured from the exterior boundary of this adjacent property.). The applicant shall update the list prior to each proposed public meeting or required public mailing, as requested by the city, in order to assure a current list of all required notices.

10. A narrative description and illustrations of how street alignments and land uses in the proposed MPD will coordinate and integrate with existing adjacent development, and adjacent undeveloped properties.

11. A narrative description of proposed ownership and proposed maintenance program for all lands and facilities required to be shown on the master plan drawings by subsection (A)(1)(a) of this section.

12. A proposed water conservation plan for the MPD pursuant to Section 18.98.190.

13. If applicable, a description of any mineral (or other resource) extraction operations proposed within the MPD, the timing and phasing of the proposed operation and reclamation of the land for subsequent proposed uses.

14. Proof of proper notice for the public information meeting.

15. A narrative description, with reference to the drawings required by subsection (A)(1)(a) above, of how the proposal will comply with the Sensitive Areas Ordinance (Chapter 19.10);

16. Proposed floor area ratios (FAR) for both residential and non-residential areas;

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17. A narrative description, with associated tables, showing the intended residential density, the number of development rights that are needed to meet the intended density, the number of development rights that are already associated with the property included within the proposed MPD boundaries, and the number of development rights that must be acquired to meet the intended density;

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18. If Transfer of Development Rights are needed to attain proposed densities, a phase plan for the acquisition of ~~The originals of the development rights certificates shall be submitted, demonstrating that for each residential phase, no more than sixty percent (60%) of the proposed density is based upon the land area included in that phase. Prior to approval of implementing project actions (subdivision approval, site plan approval, etc.), the originals or documentation of the right to use development rights held in trust by the city pursuant to the terms of the Transfer of Development Rights Program (Chapter 19.24), shall be provided, showing that the development rights necessary to meet the intended density have been acquired or otherwise secured so that they will be available if the intended density is approved.~~

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B. The director shall have the authority to administratively establish additional detailed submittal requirements.

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C. The applicant shall pay all costs incurred by the city in processing the MPD permit application, including, but not limited to, the costs of planning and engineering staff and consultants, SEPA review, fiscal experts, legal services, and overall administration. A deposit in an amount equal to the staff's estimate of processing the MPD, as determined after the preapplication conference shall be required to be paid at the time of application, and shall be placed in a separate trust account. The city shall establish procedures for periodic billings to the applicant of MPD review costs as such costs are incurred, and may require the maintenance of a minimum fund balance through additional deposit requests. (Ord. 779 § 2 Exh. 1 (part), 2005)

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#### 18.98.050 MPD permit - Required approvals.

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A. MPD Permit Required. An approved MPD permit and development agreement shall be required for every MPD.

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B. Consolidated Review. ~~An MPD permit will be allowed as part of a consolidated permit action as authorized by RCW 36.70B. Consolidation shall not be allowed for comprehensive plan amendments. At the city's discretion, an MPD permit may be processed concurrently with amendments to the development regulations or interlocal agreements, provided that the applicant acknowledges in writing that they assume the risk of the MPD permit application being denied or otherwise conditioned as a result of final action on any requested amendment.~~

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C. Implementing Development Applications. An MPD permit must be approved, and a development agreement as authorized by RCW 36.70B completed, signed and recorded, before the city will grant approval to an application for any implementing development approval. An application for an MPD permit may be processed with amendments to the comprehensive plan, zoning code, inter-local agreements and land development permits associated with the MPD permit, such as forest practice permits, clearing and grading permits, shorelines permits, and permits required by other public agencies. The city shall not grant approvals to related permits before the granting of an MPD permit and

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recording of a development agreement except as provided in 18.98.030.A.4.. (Ord. 779 § 2 Exh. 1 (part), 2005)

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#### 18.98.060 MPD permit - Review process.

A. MPD Permit - Preapplication Conference, Public Information Meeting and Planning Commission Informational Meeting Required.

1. A preapplication conference between the MPD applicant or representative and staff is required before the city will accept an MPD permit application.

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a. The purpose of this conference is for the applicant to familiarize the staff with the proposed MPD, and for the staff to review with the applicant the city's submittal requirements, anticipated staffing needs, and processing procedures for MPD permit approval. The goal is to identify the city's objectives and likely issues, and to eliminate potential problems that could arise during processing of the MPD permit application prior to formal processing on the MPD permit application.

b. The applicant or representative shall present the information required as part of the MPD application. The city's intent is that the conference occurs after site inventory and analysis has been substantially completed, but prior to the completion of detailed survey, architectural or engineering work on the proposal.

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c. A nonrefundable preapplication conference fee in an amount set forth in the adopted fee schedule resolution shall be paid before the preapplication conference will be scheduled.

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d. If, at the preapplication conference, the city determines that it does not have adequate staff, space, or equipment, to process the application, then the applicant shall deposit with the city an amount sufficient for the city to hire the additional staff and/or consultants, and acquire the space and/or equipment necessary to process the application. The deposit must be made no less than four months or more than five months before the application is submitted. The public information meeting may not be scheduled until the deposit has been made. The city council may waive or shorten the four-month period if it is determined the necessary arrangements for staffing, space and equipment can be made in less than four months.

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2. After the preapplication conference has been completed, a public information meeting shall be conducted by the applicant prior to acceptance of an MPD permit application.

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a. The applicant shall schedule and conduct a public information meeting regarding the proposed application. The public information meeting shall be conducted at City Hall, or at such other public location within the city that will accommodate the anticipated attendees. The applicant shall attend the meeting and provide information to the public regarding the proposed project, its timing, and consistency with the city's MPD code, the comprehensive plan, and other applicable city codes and regulations.

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b. The public information meeting shall not be a public hearing, but shall allow for an informal exchange of comments between the applicant and the general public. Notice of this meeting shall be provided in the newspaper of record at least fourteen days in advance of the meeting and shall be mailed to the property owners identified in subsection (B)(7)(c) of this section.

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3. After the public information meeting has been completed, a planning commission informational meeting shall be conducted. The planning commission informational meeting is required before the city will accept an application for MPD permit approval.

a. The planning commission informational meeting will take place at a regular meeting of the commission. At this meeting, the applicant shall present the overall planning and design concept of the proposed MPD, and the commission shall provide preliminary feedback to the applicant regarding the consistency of this concept with the city's adopted standards, goals and policies. The planning commission may bring specific issues of interest or concern to the attention of the applicant.

b. While a public meeting, the purpose of the planning commission informational meeting is not intended for the receipt of comments from the public regarding the proposed MPD.

B. MPD Permit Public Review Process.

1. Completeness Check and SEPA. Staff shall review the MPD application for completeness and, once it is determined to be complete, provide the required notice of application. Staff will then initiate the SEPA process.

2. Optional EIS Scoping Meeting. If the responsible official makes a determination of environmental significance regarding an MPD application, staff may schedule and conduct an EIS scoping meeting. The applicant shall attend the meeting and provide information regarding the proposed project, scope, planning, timing, and the results of any relevant environmental studies performed by the applicant's consultants.

3. Staff Review. At the conclusion of the SEPA process, staff will conduct its detailed review of the proposal. This review may include requesting additional information, or proposal revisions, from the applicant.

4. Staff Report. The staff will prepare a written staff report to the hearing examiner. The completed staff report shall be sent to the hearing examiner and to the applicant at least ten calendar days prior to the public hearing.

5. Hearing Examiner Public Hearing. The city's hearing examiner shall hold a public hearing on the MPD permit application. At least fourteen calendar days prior to the public hearing, the city shall provide notice of the hearing as follows:

a. Publication in the city's newspaper of record;

b. Posting of the proposal site, in at least three locations visible from public streets or rights-of-way;

c. Mailing to owners of record of properties within five hundred feet of the perimeter of the proposed MPD per 18.98.040(A)(9); and

d. Any person(s) formally requesting notice.

6. MPD Permit Approval Criteria. The hearing examiner shall prepare recommended findings of fact, conclusions of law, and conditions of approval or a recommendation for denial for the city council's consideration, and shall transmit these to the city council within fourteen calendar days of the close of the public hearing. The examiner shall evaluate the MPD application and other evidence submitted into the record, to determine if the application, when appropriately conditioned, meets or exceeds the approval criteria set forth in section 18.98.080.

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b. There are no significant adverse environmental impacts;¶

c. The proposed project will have no adverse financial impact upon the city at each phase of development, as well as at full build-out. This shall include conditioning any approval so that the fiscal analysis is updated to show continued compliance with this criteria, in accordance with the following schedule:¶

i. If any phase has not been completed within five years, a new fiscal analysis must be done with regards to that phase before an extension can be granted, and¶

ii. Prior to commencing a new phase;¶

d. There is concurrency for all utilities and transportation system improvements prior to occupancy at each phase and at build-out;¶

e. The project, at all phases and at build-out, will not exceed the available city staffing or result in the lowering of ... [1]

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7. City Council. At its first regular meeting following the receipt of the hearing examiner's recommendations, the city council shall schedule a time for its consideration of the MPD. The council may:

- a. Accept the examiner's recommendation;
- b. Remand the MPD application to the examiner with direction to open the hearing and provide supplementary findings and conclusions on specific issues; or
- c. Modify the examiner's recommendation. If modifying the examiner's recommendation, the council shall enter its own modified findings and conclusions as needed.

8. Appeals. The council's decision with regard to an MPD permit shall be the city's final action for the purpose of any and all appeals. (Ord. 779 § 2 Exh. 1 (part), 2005)

**Deleted:** 1. If the MPD project is adjacent to property already developed, or being developed as an MPD, or adjacent to property which is within an MPD overlay zone, then the project is designed so that there is connectivity of trails, open spaces and transportation corridors, the designs of streetscape and public open space amenities are compatible and the project will result in the functional and visual appearance of one integrated project with the adjacent properties subject to MPD approvals.¶  
So long as to do so would not jeopardize the public health, safety, or welfare, the examiner may allow the applicant to voluntarily contribute money to the city in order to advance projects to meet the city's adopted concurrency or level of service standards, or to mitigate any identified adverse fiscal impact upon the city that is caused by the project.¶

#### 18.98.070 MPD permit - Environmental review (SEPA).

A. Pursuant to the requirements of the State Environmental Policy Act (SEPA) and local SEPA regulations, the city shall determine whether an environmental impact statement is required for the MPD proposal. An application for an MPD permit shall include, at a minimum, a completed environmental checklist. Prior to or concurrent with application submittal, the city and the applicant may agree to prepare an environmental impact statement for the proposal.

B. If desired by the applicant and deemed appropriate by the city, an MPD proposal may be designated by the city as a planned action pursuant to RCW 43.21C.031(2) and WAC 197-11-164 et seq.

C. Implementing city permits and approvals, such as preliminary plats, building permits, and design reviews, shall be subject to applicable SEPA requirements. (Ord. 779 § 2 Exh. 1 (part), 2005)

#### 18.98.080 MPD permit approval - Conditions of approval.

A. An MPD permit shall not be approved unless it is found to meet the intent of the following criteria or that appropriate conditions are imposed so that the objectives of the criteria are met:

1. The project complies with all applicable adopted policies, standards and regulations. In the event of a conflict between the policies, standards or regulations, the most stringent shall apply unless modifications are authorized in this chapter and all requirements of section 18.98.130 have been met. In the case of a conflict between a specific standard set forth in this chapter and other adopted policies, standards or regulations, then the specific requirement of this chapter shall be deemed the most stringent.

2. Significant adverse environmental impacts are appropriately mitigated.

3. The proposed project will have no adverse financial impact upon the city at each phase of development, as well as at full build-out. The fiscal analysis shall also include the operation and maintenance costs to the city for operating, maintaining and replacing public facilities required to be constructed as a condition of MPD approval or any implementing approvals related thereto. This shall include conditioning any approval so that the fiscal analysis is updated to show continued compliance with this criteria, in accordance with the following schedule:

**Deleted:** A. The MPD permit shall contain such conditions as are necessary to ensure that the approved MPD complies with all applicable policies, standards, and objectives of the city, including the provisions of this chapter and the criteria set forth in Section 18.98.060(B)(6) of this chapter. (Ord. 779 § 2 Exh. 1 (part), 2005)¶

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- a. If any phase has not been completed within five years, a new fiscal analysis must be completed with regards to that phase before an extension can be granted; and
- b. Prior to commencing a new phase.

4. A phasing plan and timeline for the construction of improvements and the setting aside of open space so that:

a. Prior to or concurrent with final plat approval or the occupancy of any residential or commercial structure, whichever occurs first, the improvements have been constructed and accepted and the lands dedicated that are necessary to have concurrency at full build out of that project for all utilities, parks, trails, recreational amenities, open space, stormwater and transportation improvements to serve the project, and to provide for connectivity of the roads, trails and other open space systems to other adjacent developed projects within the MPD and to the MPD boundaries; provided that, the city may allow the posting of financial surety for all required improvements except roads and utility improvements if determined to not be in conflict with the public interest; and

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b. At full build out of the MPD, all required improvements and open space dedications have been completed, and adequate assurances have been provided for the maintenance of the same. The phasing plan shall assure that the required MPD objectives for employment, fiscal impacts, and connectivity of streets, trails, and open space corridors are met in each phase, even if the construction of improvements in subsequent phases is necessary to do so.

5. The project, at all phases and at build out, will not result in the lowering of established staffing levels of service including those related to public safety.

6. Throughout the project, a mix of housing types is provided that contributes to the affordable housing goals of the City.

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7. If the MPD proposal includes properties that are subject to the Black Diamond Urban Growth Area Agreement (December 1996), the proposal shall be consistent with the terms and conditions therein.

8. If the MPD proposal includes properties that were annexed into the city by Ordinances 515 and 517, then the proposal must be consistent with the terms and conditions therein.

9. The orientation of public building sites and parks preserves and enhances, where possible taking into consideration environmental concerns, views of Mt. Rainier and other views identified in the comprehensive plan. Major roads shall be designed to take advantage of the bearing lines for those views.

10. The proposed MPD meets or exceeds all of the public benefit objectives of 18.98.020 and the MPD purposes of 18.98.010, B through M.

11. If the MPD project is adjacent to property already developed, or being developed as an MPD, or adjacent to property which is within an MPD zone, then the project is designed so that there is connectivity of trails, open spaces and transportation corridors, the design of streetscape and public open space amenities are compatible and the project will result in the functional and visual appearance of one integrated project with the adjacent properties subject to an MPD permit or, if not yet permitted, within an MPD zone.

12. As part of the phasing plan, show open space acreages that, upon buildout, protect and conserve the open spaces necessary for the MPD as a whole. Subsequent implementing approvals shall be reviewed against this phasing plan to determine its consistency with open space requirements.

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13. Lot dimensional and building standards shall be consistent with the MPD Design Guidelines.

14. School sites shall be identified so that all school sites meet the walkable school standard set for in the comprehensive plan. The number and sizes of sites shall be designed to accommodate the total number of children that will reside in the MPD through full build out, using school sizes based upon the applicable school district's adopted standard. The requirements of this provision may be met by a separate agreement entered into between the applicant, the city and the applicable school district, which shall be incorporated into the MPD permit and development agreement by reference.

B. So long as to do so would not jeopardize the public health, safety, or welfare, the city may, as a condition of MPD permit approval, allow the applicant to voluntarily contribute money to the city in order to advance projects to meet the city's adopted concurrency or level of service standards, or to mitigate any identified adverse fiscal impact upon the city that is caused by the proposal.

**18.98.090 MPD permit - Development agreement.**

The MPD conditions of approval shall be incorporated into a development agreement as authorized by RCW 36.70B.170. This agreement shall be binding on all MPD property owners and their successors, and shall require that they develop the subject property only in accordance with the terms of the MPD approval. This agreement shall be signed by the mayor and all property owners and lien holders within the MPD boundaries, and recorded, before the city may approve any subsequent implementing permits or approvals (preliminary plat, design review, building permit, etc.) (Ord. 779 § 2 Exh. 1 (part), 2005)

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**18.98.100 MPD permit - Amendments to an approved MPD permit.**

An applicant may request an amendment to any element or provision of an approved MPD. All applications for amendments shall be deemed either "minor" or "major." An amendment application shall be considered minor if it meets all of the following criteria:

A. Would not increase the total number of dwelling units in an MPD above the maximum number set forth in the approved MPD permit or reduce the number by more than ten percent;

B. Would not increase the total floor area of nonresidential uses by more than ten percent;

C. Would not decrease the minimum, or increase the maximum density for residential areas of the MPD beyond density ranges approved in the MPD permit;

D. Would not decrease the approved amount of open space or recreation space;

E. Would not increase any adverse environmental impact, provided that additional environmental review may be required to determine whether such change is likely to occur;

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F. Would not adversely impact the project's fiscal projections to the detriment of the city;

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G. Would not significantly impact the overall design of the approved MPD; and

H. Would not significantly alter the size or location of any designated open space resulting in a lowered level of service and does not reduce the total amount of required open space.

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I. Minor amendments may be approved administratively in accordance with the procedure set forth in the MPD development agreement, where applicable. Any amendment application that is not "minor" shall be deemed to be major. The final determination regarding whether an amendment is "minor" or "major" shall rest with the director, subject to appeal to the hearing examiner. Applications for major modifications shall be reviewed by the same procedures applicable to new MPD permit requests. The city, through the development agreement for the approved MPD, may specify additional criteria for determining whether a proposed modification is "major" or "minor", but the criteria listed in this section cannot be modified or reduced in a development agreement. (Ord. 779 § 2 Exh. 1 (part), 2005)

#### 18.98.110 MPD standards - Design review required.

A. Design Standards. The MPD master plan and each subsequent implementing permit or approval request, including all proposed building permits, shall be consistent with the MPD design standards that are in effect at the time each application is determined to be complete.

##### B. Design Review Process.

1. MPD Permit. The hearing examiner shall evaluate the overall MPD master plan for compliance with the MPD design standards, as part of the examiner's recommendation to the city council on the overall MPD permit.

2. Implementing Permits or Approvals - Residential Subdivisions. Each residential subdivision that is part of an approved MPD shall be reviewed at the time of preliminary plat review for compliance with the city's MPD design standards. This review shall include typical elevations, and exterior material samples for the single-family residences and other structures to be built on the subdivided lots. This review shall be merged with the hearing examiner's review of the preliminary plat.

3. Implementing Permits or Approvals - Short Subdivisions (Short Plats). Short subdivisions (short plats) within an approved MPD shall be reviewed by the director for compliance with the city's MPD design standards as required in (2) above.

4. Implementing Permits or Approvals - Residential Building Permits. Staff shall administratively review residential building permit applications in approved and recorded subdivisions and short subdivisions for consistency with the MPD design guidelines.

5. Implementing Permits or Approvals - Other Building Permits. All other structures shall be reviewed by the director for compliance with the MPD design standards. The director shall make a decision on the proposal's compliance with the MPD design standards and adopt findings, conclusions and, where applicable, conditions of approval. Building permit applications that are found to be not consistent with the approved design standards shall be rejected, subject to appeal to the hearing examiner.

6. Future Project Consistency. The decision-maker shall not approve a preliminary plat or short plat, or issue a building permit or site plan review approval for a parcel located within an MPD, unless the city has found that the proposal is consistent with applicable MPD design standards. (Ord. 779 § 2 Exh. 1 (part), 2005)

#### 18.98.120 MPD standards - Permitted uses and densities.

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A. MPDs shall include a mix of residential and nonresidential use. Residential uses shall include a variety of housing types and densities.

B. The MPD shall include those uses shown or referenced for the applicable parcels or areas in the comprehensive plan, and may also provide neighborhood commercial uses, as defined in the comprehensive plan, sized and located to primarily serve the residential portion of the MPD.

C. The MPD shall, within the MPD boundary, or elsewhere within the city, provide for sufficient properly zoned lands, and include sufficient incentives to encourage development as permit conditions, so that the employment targets set forth in the comprehensive plan for the number of proposed residential units within the MPD, will, with reasonable certainty, be met before full buildout of the residential portion of the MPD.

E. Property that is subject to a preannexation agreement, development agreement or annexation ordinance conditions relating to residential density will have as its base density the minimum density designated in such agreement or ordinance. All other property will have as its base density the minimum density designated in the comprehensive plan.

F. The council may authorize a residential density of up to 12 dwelling units per acre so long as all of the other criteria of this chapter are met, the applicant has elected to meet the open space requirements of section 18.98.140(G), or otherwise is providing the open space required by section 18.98.140(F), and the additional density is acquired by participation in the TDR program. In any development area within an MPD, for which the applicant has elected to meet the open space requirements of section 18.98.140(G) or is otherwise meeting the open space requirement of 18.98.140(F), the an effective density of development ~~12 dwelling units per acre~~, up to a maximum of 18 dwelling units per gross acre may be approved, so long as the total project cap density is not exceeded and the development, as situated and designed, is consistent with the provisions of 18.98.010 and 18.98.020. No more than 3% of the gross land area of a MPD may include multi-family housing at up to 30 dwelling units per gross acre, subject to the following:

1. Areas proposed for development at more than 18 dwelling units per gross acre shall be identified on the MPD plan; and
2. Identified sites shall be located within ¼ mile of shopping/commercial services or transit routes; and
3. The maximum building height shall not exceed 45 feet ; and
4. Design guidelines controlling architecture and site planning for projects exceeding 18 dwelling units per gross acre shall be included in the required development agreement for the MPD; and
5. Residential uses located above ground floor commercial/office uses in mixed use areas within a MPD are not subject to a maximum density, but area subject to the maximum building height, bulk/massing, and parking standards as defined in the design guidelines approved for the MPD. No more than two floors of residential uses above the ground floor shall be allowed.

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G. Unless the proposed MPD applicant has elected to meet the open space requirements of section 18.98.140(G), or is otherwise meeting the open space requirements of section 18.98.140(F), the following conditions will apply, cannot be varied in a development agreement, and shall preempt any other provision of the code that allows for a different standard:

1. clustering of residential units shall not be allowed;
2. residential density shall not exceed four (4) dwelling units per acre in any location;
3. the lot dimension requirements of 18.44.040 shall be met.

#### 18.98.130 MPD standards - Development standards.

A. Where a specific standard or requirement is specified in this chapter, then that standard or requirement shall apply. Where there is no specific standard or requirement and there is an applicable standard in another adopted city code, policy or regulation, then the MPD permit and related development agreement may allow development standards different from set forth in other chapters of the Black Diamond Municipal Code, if the proposed alternative standard:

1. Is needed in order to provide flexibility to achieve a public benefit; and
2. Furthers the purposes of this chapter and achieves the public benefits set forth in section 18.98.010; and
3. Provides the functional equivalent and adequately achieves the purpose of the development standard from which it is intended to deviate.

B. Any approved development standards that differ from those in the otherwise applicable code shall not require any further zoning reclassification, variances, or other city approvals apart from the MPD permit approval.

#### 18.98.140 MPD standards - Open space requirements.

A. An approved MPD shall contain at least fifty percent on-site open space, except as modified by prior agreements. Open space is defined as, wildlife habitat areas, perimeter buffers, environmentally sensitive areas and their buffers, and trail corridors. It may also include developed recreation areas, such as golf courses, trail corridors, playfields, parks of one-quarter (1/4) acre or more in size, pocket parks that contain an active use element, those portions of school sites devoted to outdoor recreation, and stormwater detention/retention ponds that have been developed as a public amenity and incorporated into the public park system. An MPD application may proposed other areas to be considered as open space, subject to approval. It shall not include such space as vegetative strips in medians, isolated lands that are not integrated into a public trail or park system, landscape areas required by the landscape code, and any areas not open to the public, unless included within a sensitive area tract as required by the chapter 19.10.

B. Natural open space shall be located and designed to form a coordinated open space network resulting in continuous greenbelt areas and buffers to minimize the visual impacts of development within the MPD, and provide connections to existing or planned open space networks, wildlife corridors, and trail corridors on adjacent properties and throughout the MPD.

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C. The open space shall be located and designed to minimize the adverse impacts on wildlife resources and achieve a high degree of compatibility with wildlife habitat areas where identified.

D. The approved MPD permit and development agreement shall establish specific uses for open space within the approved MPD.

E. The approved MPD permit and development agreement shall establish which open space shall be dedicated to the city, which shall be protected by conservation easements, and which shall be protected and maintained by other mechanisms. (Ord. 779 § 2 Exh. 1 (part), 2005)

F. An approved MPD shall contain the amount of open space required by any prior agreement.

G. If an applicant elects to provide fifty percent (50%) open space, then the applicant may be allowed to vary lot dimensions as authorized elsewhere in this chapter, cluster housing, and seek additional density as authorized in Section 18.98.130(F).

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#### 18.98.150 MPD standards - On-site recreation and trail requirements.

A. An MPD shall provide on-site recreation areas and facilities sufficient to meet the needs of MPD residents, exceeding or at a minimum consistent with levels of service adopted by the city where applicable. This shall include providing for a coordinated system of trails and pedestrian linkages both within, and connecting to existing or planned regional or local trail systems outside of the MPD.

B. The MPD permit and development agreement shall establish the sizes, locations, and types of recreation facilities and trails to be built and also shall establish methods of ownership and maintenance. (Ord. 779 § 2 Exh. 1 (part), 2005)

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#### 18.98.155 MPD standards – sensitive areas.

A. The requirements of the Sensitive Areas Ordinance (BDMC 19.10) shall be the minimum standards imposed for all sensitive areas.

B. All development, including road layout and construction, shall be designed, located and constructed to minimize impact of wildlife habitat and migration corridors. This shall include minimizing use of culverts in preference to open span crossings.

#### 18.98.160 MPD standards - Transfer of development rights.

A. All proposed transfers of development rights shall be consistent with the TDR program (Chapter 19.24). An MPD permit and development agreement shall establish the TDR requirements for a specific MPD. Maximum allowable MPD residential densities can only be achieved through participation in the city's TDR program as a receiving site. (Ord. 779 § 2 Exh. 1 (part), 2005)

B. Property that is subject to a preannexation agreement, development agreement or annexation ordinance conditions relating to residential density will have as its base density the density designated in such agreement or ordinance. All other property will have as its base density the minimum density designated in the comprehensive plan.

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#### 18.98.170 MPD standards - Street standards.

A. Street standards shall be consistent with the MPD design guidelines, which may deviate from city-wide street standards in order to incorporate "low impact development" concepts such as narrower pavement cross-sections, enhanced pedestrian features, low impact stormwater facilities, and increased connectivity or streets and trails. Any increased operation and maintenance costs to the city associated therewith shall be incorporated into the fiscal analysis.

B. The street layout shall be designed to preserve and enhance views of Mt. Rainier or other views identified in the city's comprehensive plan to the extent possible without adversely impacting sensitive areas and their buffers.

C. The approved street standards shall become part of the MPD permit approval, and shall apply to public and private streets in all subsequent implementing projects except when new or different standards are specifically determined by the city council to be necessary for public safety. (Ord. 779 § 2 Exh. 1 (part), 2005)

#### 18.98.180 MPD standards - Stormwater management standards.

A. The stormwater management system shall enhance the adopted standards that apply generally within the city, in order to implement the concepts in sections 18.98.010(C), (H), and (L), 18.98.020(B) and (C), and 18.98.180(C). The stormwater detention system shall be publicly owned. Provided, in non-residential areas, the use of private vaults and filters may be authorized where: 1) the transmission of the stormwater by gravity flow to a regional system is not possible and 2) there is imposed a maintenance/replacement condition that requires vault filters to be regularly inspected and maintained by the property owner.

B. The stormwater management system shall apply to public and private stormwater management systems in all subsequent implementing projects within the MPD, except when new or different standards are specifically determined by the city council to be necessary for public health or safety, or as modified as authorized in section 18.98.195(B). C. Opportunities to infiltrate stormwater to the benefit of the aquifer, including opportunities for reuse, shall be implemented as part of the stormwater management plan for the MPD. (Ord. 779 § 2 Exh. 1 (part), 2005)

D. The use of small detention/retention ponds shall be discouraged in favor of the maximum use of regional ponds within the MPD, recognizing basin constraints. Ponds shall be designed with shallow slopes with native shrub and tree landscaping and integrated into the trail system or open space corridors whenever possible. Small ponds shall not be allowed unless designed as a public amenity and it is demonstrated that transmitting the stormwater to a regional pond within the MPD is not technically feasible.

#### 18.98.190 MPD standards - Water and sewer standards.

A. An MPD shall be served with public water and sanitary sewer systems that:

1. Employ innovative water conservation measures including metering technologies, irrigation technologies, landscaping and soil amendment technologies, and reuse technologies to reduce and/or discourage the reliance upon potable water for nonpotable uses including outdoor watering.

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2. Are designed in such a way as to eliminate or at a minimum reduce to the greatest degree possible the reliance upon pumps, lift stations, and other mechanical devices and their associated costs to provide service to the MPD.

B. Each MPD shall develop and implement a water conservation plan to be approved as part of the development agreement that sets forth strategies for achieving water conservation at all phases of development and at full buildout, that results in water usage that is at least ten percent less the average water usage in the city for residential purposes at the time the MPD application is submitted. For example, if the average water usage is 200 gallons per equivalent residential unit per day, then the MPD shall implement a water conservation strategy that will result in water use that is 180 gallons per day or less per equivalent residential unit. (Ord. 779 § 2 Exh. 1 (part), 2005)

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#### 18.98.195 Vesting.

A. Except to the extent earlier terminated, modified by the provisions of this chapter, or as otherwise specified in the conditions of approval, the MPD permit approval vests the applicant for fifteen years to all conditions of approval and to the development regulations in effect on the date of approval.

B. Vesting as to stormwater regulations shall be on a phase by phase basis.

C. Vesting as to conditions necessary to meet the fiscal impacts analysis criteria required by Section 18.98.060(B)(6)(c) shall only be for such period of time as is justified by the required updated analysis. (Ord. 779 § 2 Exh. 1 (part), 2005)

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D. Building permit applications shall be subject to the building codes in effect at the time a building permit application is deemed complete.

E. The council may grant an extension of the 15 year vesting period for up to five years for any phase so long as the applicant demonstrates with clear and convincing evidence that all of the following are met:

1. The phase approval has not been revoked in accordance with the provisions of section 18.98.200;

2. The failure to obtain the implementing entitlement approval for the applicable phase is a result of factors beyond the applicant's control;

3. The granting of an extension will not adversely impact any of the purposes or public benefit provisions of this chapter; and

4. The city has not adopted ordinances of general application that impose a more stringent development standard than those in effect for the phase for which a time extension is requested or, in the alternative, the applicant agrees to comply with the more stringent standard.

Any request for an extension shall be considered as a major amendment to the MPD. The council may impose such additional conditions to the phases as it deems appropriate to further the purposes and public benefit objectives of the MPD code in light of the number of years that have passed since the original MPD permit approval and taking into consideration the effectiveness of the exiting permit conditions in meeting those purposes and public benefit objectives.

#### 18.98.200 Revocation of MPD permit.

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The city council may amend or revoke any or all conditions of MPD approval, after public hearing and notice under the following circumstances:

A. If the MPD permit allowed for phasing and the implementing action (i.e., final plat approval, site plan approval, etc.) for the development of the next phase, has not been approved within five years of the approval of the previous phase or, in the case of the first phase, from the original MPD approval and an extension of said phase has not been previously granted. An extension may be granted for up to an additional two years on such additional conditions as the council determines are necessary in order to assure that the extension does not adversely impact the intent and purpose of the initial MPD approval.

B. A condition of the MPD approval has been violated and the violation has not been corrected after sixty days notice of the violation unless said violation can be corrected through the use of a duly posted performance or maintenance bond provided at the time of MPD approval.

C. A violation of an MPD condition of approval that cannot be corrected, such as the destruction of wetlands or removal of trees and vegetation that was specifically prohibited and cannot be restored to their original state within sixty days, unless otherwise determined by the Director.

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D. The MPD permit has been approved for more than five years and the city council finds that further development will present a threat to the public health, safety and welfare unless the amendment or revocation is implemented; provided, however, the city shall first determine that the condition cannot be amended in order to eliminate the threat to the public health, safety or welfare before it revokes the permit approval.

The above provisions notwithstanding, the vacation and/or amendment of the MPD approval shall not affect previously approved building permits. (Ord. 779 § 2 Exh. 1 (part), 2005)

E. If the MPD permit is revoked for undeveloped phases, the parcels for which the permit is revoked cannot be developed without a new MPD permit being obtained, even if the revoked parcels are less than the minimum acreage required by section 18.98.030.

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- a. The city's adopted policies and regulations, including, but not limited to, the municipal code, comprehensive plan, public works standards, critical areas regulations, MPD ordinance and MPD design standards. In event of a conflict between the policies, standards, objectives, or regulations the most stringent shall apply unless modifications are authorized in the MPD ordinance and design standards;
- b. There are no significant adverse environmental impacts;
- c. The proposed project will have no adverse financial impact upon the city at each phase of development, as well as at full build-out. This shall include conditioning any approval so that the fiscal analysis is updated to show continued compliance with this criteria, in accordance with the following schedule:
  - i. If any phase has not been completed within five years, a new fiscal analysis must be done with regards to that phase before an extension can be granted, and
  - ii. Prior to commencing a new phase;
- d. There is concurrency for all utilities and transportation system improvements prior to occupancy at each phase and at build-out;
- e. The project, at all phases and at build-out, will not exceed the available city staffing or result in the lowering of city staffing levels of service established by the city, including those related to public safety;
- f. The project, in each residential phase, provides a mix of housing types that allows the project to meet the percentage of affordable housing recommended under the county-wide planning policies;
- g. For those portions of a proposed MPD that have comprehensive plan land use designations, the ratio of residential to commercial land uses within the MPD shall be the same as designated on the comprehensive land use map unless the required fiscal study supports or requires a different ratio of residential to commercial land uses;
- h. If the MPD proposal includes properties that are subject to the Black Diamond urban growth area agreement (December 1996) then the proposal is consistent with the terms and conditions therein;
- i. If the MPD proposal includes properties that were annexed into the city by Ordinances 515 and 517 then the proposal must be consistent with the terms and conditions therein;
- j. The orientation of public building sites or parks shall preserve view corridors of Mt. Rainier or other view corridors identified in the city's comprehensive plan;
- k. The proposed MPD meets or exceeds all of the public benefit objectives of Section 18.98.020 of this chapter, and the MPD purposes set forth in Section 18.98.010(B) through (M) of this chapter;

, and shall take place at the same meeting at which the planning commission holds its public hearing on the plat. The city shall merge its public notice of the design review with the required public notice of the preliminary plat hearing, utilizing the notice requirements for that hearing, as set forth in divisions of land, Title 17 Black Diamond Municipal Code. The city's planning/design commission shall make a recommendation to the city council on the plat's compliance with the MPD design standards, including, but not limited to, the compliance of the proposed street layout and schematic design of the proposed residential structures. This recommendation shall be forwarded to the council in conjunction with the planning commission's recommendation on the preliminary plat.



The planning/design commission shall adopt findings, conclusions and, where applicable, recommended conditions of approval with respect to the proposed subdivision's compliance with the city's MPD design standards. Individual detached single-family residential structures on lots seven thousand two hundred square feet or greater in size are subject to administrative review for compliance with the city MPD design standards but are exempt from the planning/design commission schematic drawing review process set forth above.

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<p>. This review shall include typical schematic drawings (floor plans, elevations, and exterior material samples) for the single-family residences and other structures to be built on the subdivided lots. This review shall take place at a regular public meeting of the commission. The city shall provide public notice of the design review at least fourteen business days prior to the scheduled commission meeting, by publishing a notice in the city's newspaper of record, and posting the site in at least three locations visible from an adjacent public street or right-of-way. Mailed notice to individual adjacent property owners is not required. The commission shall make a decision on the short plat's compliance with the MPD design standards, including but not limited to the compliance of the proposed lot layout and schematic design of the proposed residential structures. The commission shall adopt findings, conclusions and, where applicable, conditions of approval. This decision shall be final unless appealed to the city council within fourteen days of the city's issuance of a notice of decision.</p>		

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<p>in Approved Subdivisions or Short Subdivisions. Within an approved MPD, the city</p>		

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<p>No public notification is required for this administrative design review. Applications for single-family residential structures that are found to be not consistent with the approved schematic drawings, or for which no schematic approval took place (other than individual detached single-family residential structures on lots seven thousand two hundred square feet or greater in size), shall be referred to the planning/design commission for its review.</p>		

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<p>(including but not limited to commercial and multifamily buildings) within an approved MPD</p>		

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<p>This review shall be made on schematic drawings (floor plans, elevations, and exterior material samples), site plans, and landscape plans for the proposed structure or structures. This review shall use the process, notice, and appeal provisions described in subsection (B)(3) of this section.</p>		

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<p>, including, but not limited to, the compliance of the proposed site and landscape plans, and design of the proposed structure(s). The commission shall</p>		

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<p>schematic drawings, or for which no schematic approval took place,</p>		

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<p>shall be referred to the planning/design commission for its review.</p>		

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Open space shall be calculated based on the gross acreage of the MPD; provided, this requirement shall not apply to property within the city's potential annexation areas as identified in the 1996 Black Diamond urban growth area agreement so long as the open space identified in that agreement that is located within the project boundaries remains permanently protected.

# CITY COUNCIL AGENDA BILL

City of Black Diamond  
Post Office Box 599  
Black Diamond, WA 98010

ITEM INFORMATION			
<b>SUBJECT:</b> <b>Ordinance 09-898, amending Title One and Title Eight of the Black Diamond Municipal Code to allow code violations to be treated as civil offenses and to add a chapter on code enforcement procedures</b>	<b>Agenda Date: April 16, 2009</b>		<b>AB09-037</b>
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		
	City Administrator –Gwen Voelpel		<b>X</b>
	City Attorney – Loren D. Combs	<b>X</b>	
	City Clerk – Brenda L. Streepy		
	Finance – May Miller		
	Public Works – Seth Boettcher		
	Economic Devel. – Andy Williamson		
	Comm. Devel. – Steve Pilcher		<b>X</b>
Cost Impact: N/A	Court – Kaaren Woods		
Fund Source: N/A	Natural Resources/Parks – Aaron Nix		
Timeline: N/A			
<b>Attachments: Ordinance No. 09-898</b>			
<b>SUMMARY STATEMENT:</b>  <p>The attached ordinance was drafted by the City Attorney’s office as part of its overall project of updating various portions of the City’s Municipal Code. Currently, zoning and nuisance code violations are treated as criminal offenses, which is not an optimal method. The proposed changes will turn code violations in civil offenses and establish that in the event of legal action, these issues will be considered by the Hearing Examiner instead of the Court.</p> <p>The City currently contracts with Clifford Brown to perform both building inspection and code enforcement services. The changes will establish a consistent procedure for dealing with code violations, making it clear what needs to be included in a warning letter and a formal Notice of Violation. This will help ensure cases are handled properly and can withstand any challenges.</p> <p>Individuals wishing to contest an alleged violation will have their appeal considered by the Hearing Examiner. Alternatively, an individual can admit to the violation and enter into a “voluntary correction agreement” with staff, specify a plan and timeline for correcting the violation.</p> <p>Staff believes these provisions will provide for a more effective and efficient method of gaining compliance with our codes, which remains the primary goal.</p>			
<b>COMMITTEE REVIEW AND RECOMMENDATION: N/A</b>			
<b>RECOMMENDED ACTION: MOTION to adopt Ordinance No. 09-898, amending Titles One and Eight of the Black Diamond Municipal Code relating to code enforcement procedures.</b>			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	
April 16, 2009			

ORDINANCE NO. 09- 898

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY  
OF BLACK DIAMOND, KING COUNTY, WASHINGTON,  
AMENDING TITLE ONE AND TITLE EIGHT OF THE  
BLACK DIAMOND MUNICIPAL CODE TO ALLOW  
CODE VIOLATIONS TO BE TREATED AS CIVIL  
OFFENSES AND TO ADD A CHAPTER ON CODE  
ENFORCEMENT PROCEDURES**

WHEREAS, under the current municipal code, violations of city regulations are a criminal offense; and

WHEREAS, having the option of handling most types of violations as a non-criminal civil violation will be more effective, because police officers and the criminal courts are often ill-prepared to resolve nuisances, building code violations, and similar situations; and

WHEREAS, the City of Black Diamond now has a designated Code Enforcement Officer who specializes in handling such situations; and

WHEREAS, this ordinance will provide clear procedures for enforcement of City regulations, enabling consistency and fairness in enforcement as well as ensuring that when a notice of violation is issued it will meet legal requirements.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Section 1.12 of the Black Diamond Municipal Code is hereby amended to read as follows:

**1.12.010 Violations of the municipal code—Penalty.**

A. Unless otherwise provided in the penalty provisions of a specific section of the municipal code, any violation of the requirements of the municipal code, including any code, regulation or statute adopted into the municipal code by reference, shall be a gross misdemeanor punishable by a fine of up to five thousand dollars (\$5,000) or imprisonment of up to one year, or by both such fine and imprisonment.

B. Each separate day or portion thereof during which a violation exists shall constitute a separate violation.

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C. Unless otherwise prohibited by law, a violation of the municipal code may, at the discretion of the City Attorney or his or her designee, be treated as a civil violation subject to a monetary penalty of five hundred dollars (\$500).

Section 2. A new chapter 8.02 entitled "Code Enforcement" is hereby added to Title 8 of the Black Diamond Municipal Code, to read as shown in the copy attached to this ordinance as Exhibit A and hereby incorporated by reference, with each page of the exhibit being initialed and dated by the mayor.

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Section 3. This Ordinance shall be in full force and effect five days after its passage, approval, posting and publication as provided by law. A summary of this Ordinance may be published in lieu of publishing the Ordinance in its entirety.

Section 4. If any provision of this Ordinance is determined to be invalid or unenforceable for any reason, the remaining provisions of this Ordinance shall remain in force and effect.

Introduced the 16th day of April, 2009.

Passed by a majority of the City Council at a meeting held on the 16<sup>th</sup> day of April, 2009.

\_\_\_\_\_  
Mayor Howard Botts

Attest:

\_\_\_\_\_  
Brenda L. Streepy, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Loren D. Combs, City Attorney

Published: \_\_\_\_\_

Posted: \_\_\_\_\_

Effective Date: \_\_\_\_\_

Ordinance No. 09-898

Page 2 of 20

Mayor's initials \_\_\_\_\_

## **EXHIBIT A TO ORDINANCE NO. 09-898**

### **Chapter 8.02 Code Enforcement**

- 8.02.010 Purpose.
- 8.02.020 Definitions.
- 8.02.030 Violation unlawful – Each day is separate violation – Misdemeanor.
- 8.02.040 Joint and several responsibility and liability.
- 8.02.050 Interference with code enforcement unlawful – Misdemeanor.
- 8.02.060 Methods of service.
- 8.02.070 Voluntary correction – Correction notice.
- 8.02.080 Notice of violation.
- 8.02.090 Stop work order – Violation a misdemeanor.
- 8.02.100 Stop use order – Violation a misdemeanor.
- 8.02.110 Removal of stop work or stop use order – Misdemeanor.
- 8.02.120 Response to notice of violation.
- 8.02.130 Failure to respond.
- 8.02.140 Mitigation hearing – Scheduling – Procedure.
- 8.02.150 Contested hearing – Filing fee – Scheduling – Correction prior to hearing.
- 8.02.160 Contested hearing – Procedure.
- 8.02.170 Contested hearing – Decision of the hearing examiner.
- 8.02.180 Failure to appear – Default order.
- 8.02.190 Monetary penalty.
- 8.02.200 Appeals.
- 8.02.210 Repeat violation or failure to abate – Misdemeanor.
- 8.02.220 Abatement.
- 8.02.230 Additional enforcement procedures.
- 8.02.240 Conflicting code provisions.
- 8.02.250 Duty not creating liability.

#### **8.02.010 Purpose.**

The purpose of this chapter is to establish an efficient system of enforcing city regulations that will enable violations to be promptly resolved wherever possible, while providing both appropriate penalties and a full opportunity for alleged violators to have a hearing to contest the violations. This chapter shall apply to all regulations as defined in Section 8.02.020; provided, a violation of any regulation of the Black Diamond Municipal Code may be prosecuted as a criminal violation at the city's discretion, pursuant to BDMC 8.02.030.

#### **8.04.020 Definitions.**

As used in this chapter, the following words, terms, and phrases shall have the meanings ascribed to them in this section, unless a different meaning is plainly required:

- A. *Abate* means to act to stop an activity, and/or to repair, replace, remove, or otherwise remedy a condition, where such activity or condition constitutes a violation of a regulation; provided, the actions must resolve the violation to the satisfaction of the city, and the actions taken to abate and the manner in which they are performed must not endanger the general health, safety, and welfare of the community. For the purposes of this chapter, the verbs “abate” and “correct” shall be interchangeable and have the same meaning.
- B. *Act* means doing or performing something.
- C. *City* means city of Black Diamond, Washington.
- D. *Code enforcement officer* means any person or persons authorized by statute, ordinance, regulation, written city policy, or interlocal agreement, or designated by the mayor or his or her designee, to enforce any of the regulations subject to the enforcement and penalty provisions of this chapter, and shall expressly include the city’s code enforcement officers; the city attorney, or his or her designee; the chief of the Black Diamond police department, or his or her designee; the director of the community development department, or his or her designee; the director of the public works department, or his or her designee; building inspectors; construction inspectors; and the chief of King County Fire District #44, or his or her designee.
- E. *Correction notice* means a written statement, issued by a code enforcement officer, notifying a person that property under his or her control is in violation of one or more regulations, and informing such person that a notice of violation may be issued and/or criminal charges filed if the violations are not abated.
- F. *Day* or *days*, as used in this chapter, shall mean calendar days unless expressly stated otherwise in a given section or subsection. Any portion of a twenty-four (24) hour day shall constitute a full calendar day.
- G. *Hearing examiner* means the Black Diamond hearing examiner and the office thereof established pursuant to Chapter 2.30 BDMC.
- H. *Notice of violation* or *notice of civil violation* means a written statement, issued by

a code enforcement officer, which contains the information required under BDMC 8.02.080, and which notifies a person that he or she is responsible for one or more violations of the Black Diamond Municipal Code.

- I. *Omission* means a failure to act.
- J. *Person* means any individual, firm, business, association, partnership, corporation or other legal entity, public or private, however organized. Because “person” shall include both human and non-human entities, any of the following pronouns may be used to describe a person: he, she, or it.
- K. *Person responsible for the violation* means any of the following: a person who has titled ownership or legal control of the property or structure that is subject to the regulation; an occupant or other person in control of the property or structure that is subject to the regulation; a developer, builder, business operator, or owner who is developing, building, or operating a business on the property or in a structure that is subject to the regulation; or any person who created, caused, or has allowed the violation to occur.
- L. *Regulation* means and includes any of the following, as now enacted or hereafter amended:
  - 1. All standards, regulations, rules, requirements and procedures adopted by the city under this municipal code; and
  - 2. Any provision of the municipal code making reference to this chapter; and
  - 3. The terms and conditions of any permit or approval issued by the city, or any concomitant agreement with the city pursuant to code provisions that make reference to this chapter.
- M. *Repeat violation* means, as evidenced by the prior issuance of a correction notice or a notice of violation, that a violation has occurred on the same property within a two (2) year period, or a person responsible for a violation has committed a violation elsewhere within the city of Black Diamond within a two (2) year period. To constitute a repeat violation, the violation need not be the same type of violation as the prior violation.
- N. *Violation or civil violation* means an act or omission contrary to a “regulation,” as that term is defined in this chapter. A violation continues to exist until abated to the



satisfaction of the city, with each day or portion thereof in which the violation continues constituting a separate violation.

**8.02.030 Violation unlawful – Each day is separate violation – Misdemeanor.**

The violation of any regulation shall be unlawful. Each day, or portion thereof, in which the violation exists constitutes a separate offense for which separate notices of violation may be issued. In addition, any violation of this chapter shall constitute a misdemeanor; provided, the city attorney, or the city attorney's designee, shall, at his or her discretion, have authority to file a violation as either a civil violation pursuant to this chapter, or as a criminal misdemeanor punishable by imprisonment in jail for a maximum term fixed by the court of not more than ninety (90) days, or by a fine in an amount fixed by the court of not more than one thousand dollars (\$1,000), or by both such imprisonment and fine. All criminal misdemeanor charges filed under this chapter shall be filed with the Black Diamond municipal court. When the city files criminal misdemeanor charges pursuant to this chapter, the city shall have the burden of proving, beyond a reasonable doubt, that the violation occurred.

**8.02.040 Joint and several responsibility and liability.**

Responsibility for violations subject to enforcement under this chapter is joint and several, and the city is not prohibited from taking action against a party where other persons may also be potentially responsible for a violation, nor is the city required to take action against all persons potentially responsible for a violation.

**8.02.050 Interference with code enforcement unlawful – Misdemeanor.**

Any person who intentionally obstructs, impedes, or interferes with any lawful attempt to serve notice of a violation, stop work or stop use order, or an emergency order, or intentionally obstructs, impedes, or interferes with lawful attempts to correct a violation shall be guilty of a misdemeanor punishable by imprisonment in jail for a maximum term fixed by the court of not more than ninety (90) days or by a fine in an amount fixed by the court of not more than one thousand dollars (\$1,000), or by both such imprisonment and fine.

**8.02.060 Methods of service.**

- A. *Service by regular first class mail shall be equal to personal service.* Any correction notice, notice of violation, notice of hearing, or other code enforcement document shall be deemed legally served upon a party by use of regular first class mail, as described in subsection (B)(2) of this section, unless another method of service is expressly required in a particular subsection of this chapter; provided, at the discretion of the code enforcement officer, the code enforcement officer may

personally serve documents or cause documents to be personally served upon a party.

- B. *Methods of service defined.* For purposes of this chapter, the methods of service of any documents related to code enforcement, such as correction notices, notices of violation, stop work orders, etc. (hereinafter “document”), are defined as follows:

1. *Personal service.* Personal service shall mean handing the document to the person subject to the document or leaving it at his or her dwelling or usual place of abode with some person of suitable age and discretion then residing therein, or leaving it at his or her office or place of employment with a person in charge thereof. Personal service shall also be deemed complete when the hearing examiner or his or her assistant hands any order, ruling, decision, or other document to a person prior to, during, or after a hearing.

2. *Mailing.* Service by mail shall mean sending the document by regular first class mail to the last known address of the person subject to the document. The last known address shall be an address provided to the city by the person to whom the document is directed; if an address has not been provided to the city, the last known address shall be any of the following as they appear at the time the document is mailed: the address of the property where the violation is occurring, as reflected on the most recent equalized tax assessment roll of the county assessor or the taxpayer address appearing for the property on the official property tax information website for King County; the address appearing in any database used for the payment of utilities for the property at which the violations are occurring; or the address of the person to whom the documents are being sent that appears in the Washington State Department of Licensing database. Where service of the notice of violation is by mail, service shall be deemed complete upon the third day following the day upon which they are placed in the mail, unless the third day falls on a Saturday, Sunday, or legal holiday, in which event service shall be deemed complete on the first day other than a Saturday, Sunday, or legal holiday following the third day.

3. *Posting.* Posting shall mean affixing a copy of the document in a conspicuous place on the property, with at least one (1) copy of such document placed at an entryway to the property or structure if an entryway exists.

4. *Publication.* Publication of the document shall mean publication as set forth in RCW 4.28.100 and 4.28.110, as currently enacted or hereafter amended.

- C. *Proof of service – Due diligence.* Proof of service shall be made by written affidavit or declaration under penalty of perjury executed by the person effecting the service, declaring the time and date of service, the manner by which service was made, and if service was made solely by posting or publication, facts showing that due diligence was used in attempting to locate a mailing address for the person at whom the notice of violation is directed.
- D. *Additional proof of service not necessary.* The hearing examiner shall not require additional proof of service beyond the requirements in this chapter.

**8.02.070 Voluntary correction – Correction notice.**

- A. *General.* Prior to the issuance of a notice of violation, the code enforcement officer shall attempt to secure the voluntary correction of a violation by attempting to contact the person responsible for the violation, explaining the violation, and requesting correction. This may be done verbally by the code enforcement officer; provided, a written correction notice shall be served on the person responsible for the violation prior to issuance of a notice of violation; provided further, a written correction notice need not be served nor efforts made to secure voluntary correction where the nature of the violation creates a risk of imminent harm to public health or safety, or where it is a repeat violation as defined in this chapter.
- B. *Service of correction notice.* Service of a written correction notice may be accomplished by regular first class mail or by personal service, at the discretion of the code enforcement officer, or by posting or publishing the correction notice if an address for the person responsible for the violation cannot be ascertained pursuant to BDMC 8.02.060(B)(2).
- C. *Contents of written correction notice.* The written correction notice shall be deemed sufficient if it contains the following information:
1. The name and address of a person responsible for the violation; and
  2. The street address or description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring; and
  3. A description of the violation and a reference to the code provisions that have been violated; and
  4. A statement indicating what corrective actions are required and a correction deadline stating the date and time by which the corrective actions must be completed to the satisfaction of the code enforcement officer in order for the violator to avoid the issuance of a notice of violation; and

5. A statement indicating that, pursuant to BDMC 8.02.030, a notice of violation may be issued for each day a violation continues, with each violation constituting a separate offense subject to civil and/or criminal penalties.
- D. *Time period in which to correct or abate the violation.* Whenever a person responsible for a violation is served with a written correction notice, he or she shall be given at least ten (10) days from the date of issuance of the notice to correct the violation(s) to the satisfaction of the code enforcement officer; provided, where, in the opinion of the code enforcement officer, a violation creates a risk of imminent harm to public health or safety, or is a repeat violation as defined in this chapter, the city can require less than ten (10) days for correction to be completed. In the event the violation is not corrected within the required time period, the city may, at its discretion, issue separate notices of violation for each day, or portion thereof, that the violation has existed or continues to exist.
- E. *Extension of voluntary correction period or modification of required actions.* An extension of the deadline for voluntary correction, or a modification of any required corrective action noted in the written correction notice, may be granted by the code enforcement officer if the person responsible for the violation has, in the opinion of the code enforcement officer, shown due diligence or made substantial progress in correcting the violations but unforeseen circumstances render correction unattainable within the original deadline.
- F. *Revocation of deadline for compliance.* The original deadline for compliance, or any extension for compliance previously granted by the code enforcement officer, may be revoked and immediate compliance required where, in the opinion of the code enforcement officer, circumstances make immediate correction necessary to avoid an imminent risk of injury to persons or property.
- G. *Use of written voluntary correction agreement.*
1. At the sole discretion of the city, a voluntary correction agreement may be entered into between the person responsible for the violation and the city. The voluntary correction agreement must be in writing.
  2. *Contents of voluntary correction agreement.* The voluntary correction agreement is a contract between the city and the person responsible for the violation under which that person agrees to abate the violations within a specified time and according to specified conditions. The voluntary correction agreement shall include the following:

- a. The name and address of the person responsible for the violation; and
- b. The street address or a description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring; and
- c. A description of the violation and a reference to the regulations that have been violated; and
- d. An acknowledgement by the person responsible for the violations that the violations described in the correction agreement exist, and that he or she is waiving the right to contest the existence of the violations or to mitigate the penalties; and
- e. The necessary corrective action to be taken, the date or time by which correction must be completed, and an acknowledgement by the person responsible for the violation that he or she will correct the violations within the time specified in the voluntary correction agreement; and
- f. Acknowledgement by the person responsible for the violation that the city may enter the property and inspect the premises as may be necessary to determine compliance with the voluntary correction agreement; and
- g. Acknowledgement by the person responsible for the violation that if the terms of the voluntary correction agreement are not met, the city may enter the property to abate the violation and may also recover its costs and expenses and/or a monetary penalty pursuant to this chapter from the person responsible for the violation; and
- h. The signature or official mark of the person responsible for the violation and the signature or official mark of the code enforcement officer.

3. *Failure to comply with voluntary correction agreement.*

- a. *Abatement by the city.* In addition to any other remedy provided for in this chapter, the city may abate the violation in accordance with BDMC 8.02.230 if the terms of the voluntary correction agreement are not met.
- b. *Penalties and costs.* If the terms of the voluntary correction agreement are not met, the person responsible for the violation may be assessed a monetary

penalty in accordance with BDMC 8.02.200, plus all costs and expenses of abatement, as set forth in BDMC 8.02.230, in addition to being issued new notices of violation or criminal charges if the violation has not been abated.

**8.02.080 Notice of violation.**

A. *Issuance of notice of violation.* When the city determines that a violation has occurred or is occurring, and does not secure voluntary correction pursuant to BDMC 8.02.070, the code enforcement officer may issue a notice of violation to any person responsible for the violation.

B. *Contents of notice.* The notice of violation shall include the following:

1. The name and address of a person responsible for the violation; and
2. The street address or description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring; and
3. A description of the violation and a reference to the provisions violated; and
4. A statement indicating that the violator must respond to the notice of violation within fourteen (14) days of the date of issuance by doing one of the following:
  - a. Paying the fine and correcting the violation;
  - b. Requesting a mitigation hearing and correcting the violation; or
  - c. Requesting a hearing to contest the violation; and
5. A statement indicating that failure to respond shall result in the violation(s) being deemed committed without requiring further action by the city, and that the full fine amount indicated on the notice of violation shall be due and owing to the city by the person or entity to whom the notice of violation was issued; and
6. A statement indicating that, unless a request to contest the violation or to mitigate the penalty is properly filed, a monetary penalty of five hundred dollars (\$500) for each violation listed on the notice of violation is due and owing at the time the notice of violation is issued, and must be paid in full within thirty (30) days or may be assigned to a collection agency; and
7. A statement indicating that if the person or entity to whom a notice of violation was issued requests a hearing and fails to attend the hearing, a default judgment

shall be entered against the person or entity to whom the violation was issued, with the full amount of the fine indicated on the notice of violation immediately due and owing, and that any unpaid fines and any costs may be assigned to a collection agency after thirty (30) days have elapsed from the date the notice of violation was issued; and

8. A statement indicating that the city may seek to recover from the person to whom the notice of violation was issued the costs to the city of any abatement action taken; and
  9. A statement indicating that separate notices of violation may be issued for each day, or portion thereof, in which a violation continues; and
  10. A statement indicating that payment of a monetary penalty does not relieve the person or entity named in the notice of violation of the duty to abate the violation, and that failure to abate may result in the issuance of additional notices of violation and/or criminal charges, with additional civil and/or criminal penalties.
- C. *Service of notice of violation.* Service of a notice of violation may be accomplished by regular first class mail or by personal service, at the discretion of the code enforcement officer, or by posting or publication if an address for the person responsible for the violation cannot be ascertained, pursuant to BDMC 8.02.060.

**1.04.090 Stop work order – Violation a misdemeanor.**

A stop work order may be issued pursuant to any of the codes or regulations adopted pursuant to BDMC Titles 14, 15, 17, 18 and 19. In addition, the code enforcement officer may issue a stop work order whenever any work that is a) subject to regulation under the Black Diamond Municipal Code, or b) subject to any condition of approval by the city or by an order of the hearing examiner is, in the opinion of the code enforcement officer, being performed in a manner contrary to the provisions of the Municipal Code, or will exacerbate damage that has already been caused to any property, or will materially impair the code enforcement officer's ability to seek compliance. The stop work order shall state the reasons for the order and may be appended to, or incorporate by reference, a notice of violation. The stop work order shall take effect immediately upon service. Service of the stop work order shall be deemed accomplished upon posting of the notice in the manner described in BDMC 8.02.060.B.3. Violation of a stop work order shall constitute a misdemeanor, punishable by imprisonment in jail for a maximum term fixed by the court of not more than ninety (90) days, or by a fine in an amount fixed by the court of not more than one thousand dollars (\$1,000), or by both such imprisonment and fine.

**1.04.100 Stop use order – Violation a misdemeanor.**

In addition to any remedy provided for in this chapter, the code enforcement officer may issue a stop use order when allowing the use to continue creates an imminent threat of injury to the health, safety, or welfare of any member of the public, or creates an imminent threat of harm to neighboring property, or will exacerbate injury already caused to any property. The stop use order shall state the reasons for the order; provided, the stop use order may be appended to, or incorporate by reference, a notice of violation. The stop use order shall take effect immediately upon service. Service of the stop use order shall be deemed accomplished upon posting of the notice in the manner described in BDMC 8.02.060.B.3. Violation of a stop use order shall constitute a misdemeanor, punishable by imprisonment in jail for a maximum term fixed by the court of not more than ninety (90) days, or by a fine in an amount fixed by the court of not more than one thousand dollars (\$1,000), or by both such imprisonment and fine.

**8.02.110 Removal of stop work or stop use order – Misdemeanor.**

Where a stop work order or a stop use order has been posted in conformity with the requirements of this chapter, removal of such order without the authorization of the city, or the hearing examiner if the matter has been heard by the hearing examiner, shall constitute a misdemeanor, punishable by imprisonment in jail for a maximum term fixed by the court of not more than ninety (90) days, or by a fine in an amount fixed by the court of not more than one thousand dollars (\$1,000), or by both such imprisonment and fine.

**8.02.120 Response to notice of violation.**

- A. *Time limit.* A person who has been served with a notice of violation must respond to the notice within fourteen (14) days of the date the notice is served. A person may respond to the notice of violation by:
1. Paying the amount of the monetary penalty as set forth in the notice of violation. Partial payment or payment using a check that is rejected for insufficient funds shall not be deemed payment under this subsection. Payment of the fine shall not relieve the person or entity responsible for the violation from the duty to correct or abate the violation. Additional notices of violation may be issued if the violation goes uncorrected.
  2. Contesting the notice of violation by requesting a contested hearing in writing and sending or hand-delivering the request to the city as described in subsection (B) of this section, along with the required filing fee.



3. Seeking to mitigate the monetary penalty by requesting a mitigation hearing to explain the circumstances surrounding the violation. The request to mitigate must be made in writing and sent or hand-delivered to the city as described in subsection B of this section. Requesting to mitigate the penalty shall not relieve the person responsible for the violation from the duty to correct or abate the violation. Additional notices of violation may be issued if the violation goes uncorrected.
- B. *Method of response.* The person or entity to whom a notice of violation has been issued may respond by mailing or hand-delivering the response to the city's community development department. Mailed responses must be postmarked no later than the fourteenth day from the date of service of the notice of violation; hand-delivered responses must be brought to the city's community development department no later than 4:30 p.m. on the fourteenth day after service; provided, where the fourteenth day falls on a weekend or holiday, the deadline shall be extended to the next regular business day. Telephone, facsimile, or email responses shall not satisfy the requirements of this section.

#### **8.02.130 Failure to respond.**

If the person to whom the notice of violation is issued fails to respond as required in BDMC 8.02.120, the violations shall be deemed committed without requiring further action by the city or the city's hearing examiner and the person to whom the notice of violation was issued shall owe the full fine amount indicated in the notice of violation.

#### **8.02.140 Mitigation hearing – Scheduling – Procedure.**

The city's director of community development shall schedule and conduct a hearing to mitigate the penalty on a violation when such hearing is properly and timely requested. The hearing shall be scheduled to occur within thirty (30) days of receipt of a proper mitigation request. Notice of the hearing date and time shall be served by regular first class mail to the address of the party who requested the hearing. The date and time for any hearing may be rescheduled by the hearing examiner for good cause upon the motion of a party or the hearing examiner. The mitigation hearing shall be conducted according to the following general procedures:

- A. The person responsible for the violation shall, as a condition of proceeding with the mitigation hearing, agree that he or she has committed the violations as set forth in the notice of the violation. The city shall be relieved of any burden of proving that the violations were committed.

- B. If the person who has requested the mitigation hearing decides at the time of the hearing that he or she wishes to contest all or some of the alleged violations, the matters wishing to be contested shall be rescheduled to be heard by the hearing examiner; *provided*, the required filing fee must be paid in full within five (5) calendar days; if the filing fee is not paid, the violations shall automatically be deemed committed.
- C. The person responsible for the violations shall be given the opportunity to explain or provide evidence regarding the nature of the violations, why the violations exist, why the violations have not been abated or corrected, and any other information the community development director determines is relevant.
- D. The city shall be given the opportunity, at its discretion, to provide evidence of the nature of the violation, evidence to rebut assertions made by any party, and any other information or evidence the community development director deems is relevant.
- E. At the conclusion of the hearing, the community development director shall issue an order finding the violations committed, and shall assess a monetary penalty for each violation pursuant to BDMC 8.02.190. Based on the evidence and testimony presented at the hearing, the community development director may reduce the monetary penalty, but is not required to do so.

**8.02.150 Contested hearing – Filing fee – Scheduling – Correction prior to hearing.**

- A. *Filing fee.* The written request for a contested hearing must be accompanied by payment of a twenty-five dollar (\$25) filing fee. This fee is non-refundable and is used to defray the costs of the hearing.
- B. *Notice and scheduling of contested hearing.* Upon timely filing of a request for a hearing and payment of the filing fee, the matter shall be scheduled to be heard at least fourteen (14) but no later than sixty (60) calendar days after the date the request was received by the city. Notice of the hearing date and time shall be served by regular first class mail to the last known address of the party who requested the hearing. The date and time for any hearing may be rescheduled by the hearing examiner for good cause upon the motion of a party or the hearing examiner.
- C. *Correction of violation prior to hearing.* The hearing may be cancelled and the party requesting the hearing need not appear only if, at least two (2) business days prior to the scheduled hearing, the code enforcement officer determines that the violation has been satisfactorily corrected or abated and the monetary penalty paid in full. Where

the scheduled hearing involves a repeat violation as defined in this chapter, the hearing shall not be cancelled unless the new violation has been corrected or abated to the satisfaction of the code enforcement officer and the monetary penalty and costs for the new violation(s) and any monetary penalty and costs owing for the previous violation(s) have been paid in full.

**8.02.160 Contested hearing – Procedure.**

The hearing examiner shall conduct a hearing to contest a violation when such hearing is properly and timely requested. The city and the person or entity to whom the notice of civil violation was issued may participate in the hearing and each party, or its legal representatives, may call witnesses and present evidence and rebuttal, subject to the following:

- A. The city shall have the burden of proving, by a preponderance of the evidence, that a violation has occurred.
- B. The parties are responsible for securing the appearance of any witnesses they may wish to call; neither the city nor the hearing examiner shall have the burden of securing any witnesses on behalf of the person who is contesting the violation(s).
- C. Because formal rules of evidence shall not apply to any such hearing, the hearing examiner shall allow hearsay testimony by the parties and not require proof of chain of custody for evidence that is presented; *provided*, the hearing examiner shall determine the weight to be assigned to any evidence presented.
- D. Any notes, reports, summaries, photographs, or other materials prepared by the parties shall be admitted into evidence if requested; *provided*, the parties are free to argue the weight that should be assigned by the hearing examiner to any evidence submitted.
- E. At any time during the hearing, the person responsible for the violation may request to mitigate, rather than contest, a violation. However, the hearing examiner must impose penalties and costs for each mitigated violation according to BDMC 8.02.190.

**8.02.170 Contested hearing – Decision of the hearing examiner.**

- A. *Contents of order.* Upon the conclusion of a hearing to contest a violation, the hearing examiner may issue a verbal decision pending issuance of the written decision; if necessary, the hearing examiner may delay issuing the written order for up to ten (10) business days following the hearing. In either event, the verbal

decision and written order shall contain findings and conclusions based on the record that includes the following information:

1. For each alleged violation of the city code, a statement indicating whether the violation has been found committed or not committed;
2. For violations found committed, the monetary penalties and costs being assessed pursuant to this chapter;
3. For violations found committed, any required corrective actions;
4. For violations found committed, a finding that abatement of the violations by the city is authorized, at the expense of the person responsible for the violations; and
5. A statement notifying the person responsible for the violation that he or she is subject to additional civil and/or criminal penalties if any violation that was the subject of the hearing has not been corrected or abated.

B. *Notice of decision.* The hearing examiner may cause a copy of the decision and order to be served upon the parties at the close of the hearing. When the hearing examiner requires more time to prepare a written order, or when a party fails to appear after requesting a contested hearing, the hearing examiner shall cause a copy of the decision and order to be served on the parties by mailing a copy to each party's last known address within ten (10) business days of the hearing.

#### **8.02.180 Failure to appear – Default order.**

- A. If the person who requests a hearing to mitigate the penalty then fails to appear at the scheduled hearing after having been given notice in the manner provided for by this chapter, the full penalty amount indicated in the notice of violation for each violation shall become immediately due and owing.
- B. If the person who requests a hearing to contest the violation(s) then fails to appear after having been given notice in the manner provided for by this chapter, the hearing examiner shall use a standard form to immediately issue a default order, which finds committed all the violations set forth in the notice of violation, and which assesses a fine in the full amount indicated in the notice of violation. In addition, at the request of the city, the hearing examiner shall also impose upon the non-appearing party any costs to the city related to preparation for the hearing. The hearing examiner shall cause a copy of the decision to be served upon the non-appearing party by mailing a

copy to the last known address of the non-appearing party within ten (10) business days of the hearing. Upon the motion of a party, the hearing examiner may rescind a default judgment only upon a showing of good cause to do so, and only if such motion has been brought within fourteen (14) calendar days of the date of the hearing at which the default judgment was ordered.

**8.02.190 Monetary penalty.**

- A. *Monetary penalty.* Each violation of a city regulation deemed committed is subject to a monetary penalty in an amount of five hundred dollars (\$500) unless a different penalty amount for a given violation is expressly authorized or required by a more specific city code provision. Except where the person responsible for the violation has admitted the violation and requested mitigation of the monetary penalty prior to commencement of a contested hearing on the matter, the hearing examiner shall have no authority to reduce the amount of the monetary penalty. Where the person has requested to mitigate the monetary penalty prior to commencement of a contested hearing on the matter, the examiner may reduce the monetary penalty for each violation, but in no case shall the penalty be reduced to an amount less than one hundred dollars (\$100) for each violation found committed.
- B. *Costs.* In addition to the monetary penalty, the hearing examiner shall also impose any costs requested by the city related to preparation and conduct of the contested hearing.
- C. *Payment of monetary penalty.* Any monetary penalties assessed pursuant to this chapter constitute a personal obligation of the person to whom the notice of civil violation is directed. In addition, the monetary penalties assessed pursuant to this chapter may be assessed against the property that is the subject of the enforcement action. Any monetary penalty assessed must be paid in full to the city within thirty (30) days from the date of service of an uncontested notice of violation or any order of the hearing examiner that assesses monetary penalties.
- D. *Collection of monetary penalty – Use of collection agency.* The city is authorized to take legal action to collect the monetary penalty. Pursuant to Chapter 19.16 RCW, as currently enacted or hereafter amended, the city may, at its discretion, use a collection agency for the purposes of collecting penalties and costs assessed pursuant to this chapter. The collection agency may add fees or interest charges to the original amount assigned to collections as allowed by law. No debt may be assigned to a collection agency until at least thirty (30) calendar days have elapsed from the time that the city attempts to notify the person responsible for the debt of the existence of the debt and that the debt may be assigned to a collection agency for collection if the debt is not

paid. Notice of potential assignment to collections shall be made by regular first class mail to the last known address of the person responsible for the violation; provided, inability to ascertain a current mailing address shall not prohibit the debt from being assigned to collections.

- E. *Continuing duty to abate violations.* Payment of a monetary penalty pursuant to this chapter does not relieve the person responsible for the violation of the duty to correct or abate the violation. Additional notices of violation may be issued and/or criminal charges filed for continuing failure to correct or abate a violation.

#### **8.02.200 Appeals.**

An appeal of the decision of the hearing examiner must be filed with the King County superior court within twenty-one (21) calendar days of service of the decision, and this shall be the exclusive means to appeal a decision of the hearing examiner rendered under this chapter.

#### **8.02.210 Repeat violation or failure to abate – Misdemeanor.**

Where a person or entity has been found to have committed a violation under this chapter, regardless of whether the violation was resolved without penalty, the failure to abate the violation, or the commission of a subsequent violation, or the violation of a written order of the hearing examiner after having received notice of the order as provided in this chapter, shall each constitute a repeat violation and shall each be a misdemeanor subject to the penalties and provisions of BDMC 8.02.030. The city attorney, or the city attorney's designee, shall, at his or her discretion, have authority to file a repeat violation as either a civil violation or as a misdemeanor.

#### **8.02.220 Abatement.**

- A. *Other abatement proceedings not precluded.* Nothing in this chapter shall prohibit the city from pursuing abatement of a violation pursuant to any other laws of the state of Washington or the city of Black Diamond.
- B. *Costs of abatement.* The costs of any abatement action taken by the city shall become a charge to the person responsible for the violation. These charges may be assessed against the person responsible for the violation or the property upon which the violation occurred, or both. The city may use any lawful means to collect these charges.

#### **8.02.230 Additional enforcement procedures.**

The provisions of this chapter are not exclusive, and may be used in addition to other enforcement and penalty provisions authorized by the Black Diamond Municipal Code or any other law.

**8.02.240 Conflicting code provisions.**

In the event a conflict exists between the enforcement provisions of this chapter and the enforcement provisions of any international or uniform code, statute, or regulation that is adopted in the Black Diamond Municipal Code and subject to the enforcement provisions of this chapter, the enforcement provisions of this chapter will prevail, unless the enforcement provisions of this chapter are preempted or specifically modified by said code, statute, or regulation.

**1.04.250 Duty not creating liability.**

No provision or term used in this chapter is intended to impose any duty upon the city or any of its officers or employees which would subject them to damages in a civil action.

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# CITY COUNCIL AGENDA BILL

City of Black Diamond  
Post Office Box 599  
Black Diamond, WA 98010

ITEM INFORMATION			
<b>SUBJECT:</b> <b>Ordinance 09-899, amending Chapter 2.30 of the Black Diamond Municipal Code, to clarify the appeal process and procedures to be followed by the City's Hearing Examiner</b>	<b>Agenda Date: April 16, 2009</b>		<b>AB09-038</b>
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		
	City Administrator –Gwen Voelpel		<b>X</b>
	City Attorney – Loren D. Combs	<b>X</b>	
	City Clerk – Brenda L. Streepy		
	Finance – May Miller		
	Public Works – Seth Boettcher		
	Economic Devel. – Andy Williamson		
	Comm. Devel. – Steve Pilcher		<b>X</b>
Cost Impact: N/A	Court – Kaaren Woods		
Fund Source: N/A	Natural Resources/Parks – Aaron Nix		
Timeline: N/A			
<b>Attachments: Ordinance No. 09-899</b>			
<b>SUMMARY STATEMENT:</b>  <p>The attached Ordinance was drafted by the City Attorney's office as part of its overall project of updating various portions of the City's Municipal Code. It is intended to clarify that the Hearing Examiner is eligible to hear a variety of appeals of administrative decisions, including land use matters, code enforcement citations and other regulatory matters as may be referenced in the code. These changes will also establish processes for filing an appeal and other matters relating the Examiner's consideration of an appeal. Finally, in order to give the decisions of the Examiner significance, section 2.30.160 establishes that a failure to comply with the decision of the Examiner constitutes a gross misdemeanor. This is recommended to ensure compliance with his/her decisions.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: N/A			
<b>RECOMMENDED ACTION: MOTION to adopt Ordinance 09-899, amending Chapter 2.30 of the Black Diamond Municipal Code to clarify the appeal process and procedures to be followed by the City's Hearing Examiner.</b>			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	
April 16, 2009			



ORDINANCE NO. 09- 899

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, AMENDING CHAPTER 2.30 OF THE MUNICIPAL CODE TO CLARIFY THE APPEAL PROCESS AND PROCEDURES TO BE FOLLOWED BY THE CITY'S HEARING EXAMINER**

WHEREAS, the City of Black Diamond recently created the position of hearing examiner to ensure that land use and other matters be handled in a manner that reflects fairness and impartiality and a clear application of complex regulations; and

WHEREAS, by clarifying a few procedural issues in chapter 2.30 of the city's municipal code, the hearing examiner system will work more smoothly and efficiently.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Section 2.30.010 of the Black Diamond Municipal Code is hereby amended to read as follows:

**2.30.010 Creation and purpose.**

A. Creation. The city creates the office of hearing examiner consistent with Article XI, Section 11 of the Washington State Constitution, and Chapters 35A.63 and 58.17 of the Revised Code of Washington, as currently written or hereafter amended.

B. Purpose. The purpose of this chapter is to provide an efficient and effective system for appeals of land use decisions, code enforcement violations, and other regulatory and administrative actions taken by the city; to provide for consistency and predictability in certain land use decision-making; to establish clear and understandable rules for the application of policies and regulations adopted by the city; and to provide for fair and impartial determinations of appealed matters while ensuring procedural due process.

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Section 2. A new section 2.30.085 is hereby added to the Black Diamond Municipal Code, to read as follows:

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**2.30.085 Filing an appeal.**

Unless prohibited by another section of the municipal code or other law, any regulatory decision or civil code enforcement action by the city may be appealed to the city's hearing examiner, including but not limited to denial of a permit and application of

zoning or other land use policies and regulations. Such request for an appeal hearing must be in writing and must briefly describe the basis of the appeal, and must be postmarked or hand delivered to the city clerk no later than ten (10) business days after the date of the decision being appealed. Requests transmitted via telephone, email, or facsimile shall not satisfy the requirements of this section.

Section 3. A new section 2.30.140 is hereby added to the Black Diamond Municipal Code, to read as follows:

**2.30.140 Failure to appear—Default judgment.**

Failure of appellant to appear for a scheduled hearing after proper notice of the hearing has been provided shall result in a default judgment being entered by the hearing examiner in favor of the city, affirming the action or decision taken by the city that was the subject of the appeal, *provided*, the hearing examiner may, at his or her discretion, nullify the default judgment and reschedule the hearing should appellant, within twenty-four hours of failing to appear, provide the hearing examiner with good cause for failing to appear. At the city's request, the costs of the missed hearing shall be assessed by the hearing examiner against the appellant.

Section 4. A new section 2.30.150 is hereby added to the Black Diamond Municipal Code, to read as follows:

**2.30.150 Notice of Decision.**

A copy of the hearing examiner's decision shall be served upon the appellant in person or by regular first class mail to the most recent address provided to the city by appellant, or, if the appellant has not provided an address, to any address for the appellant that is maintained in the city's current utility billing records, most recent county tax rolls, or current Department of Licensing records. When notice of a hearing examiner's decision has been given as required in this section, failure of appellant to receive such notice shall not relieve the defendant of the responsibility to pay any fees imposed or to take any other actions ordered in the hearing examiner's decision.

Section 5. A new section 2.30.160 is hereby added to the Black Diamond Municipal Code, to read as follows:

**2.30.160 Violation of order of hearing examiner—Gross Misdemeanor.**

- A. Any person who intentionally violates or refuses to comply with an order of the hearing examiner shall be guilty of a gross misdemeanor punishable by a fine not to exceed five thousand dollars (\$5,000) and imprisonment not to exceed 365 days, or by both such fine and imprisonment. Each day or portion thereof during which the violation or non-compliance continues shall constitute a separate violation.
- B. Nothing in this chapter shall limit the right of the city to pursue all other lawful legal remedies and penalties for continued violation of, or non-compliance with, an order of the hearing examiner.

Section 6. Severability. Each and every provision of this Ordinance shall be deemed severable. In the event that any portion of this Ordinance is determined by final order of a court of competent jurisdiction to be void or unenforceable, such determination shall not affect the validity of the remaining provisions thereof, provided the intent of this Ordinance can still be furthered without the invalid provision.

Section 7. Effective date. This Ordinance shall be in full force and effect five (5) days after publication as required by law. A summary of this Ordinance may be published in lieu of the entire Ordinance, as authorized by state law.

Introduced on the 16th day of April, 2009.

Passed by the City Council on the 16th day of April, 2009.

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Mayor Howard Botts

ATTEST:

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Brenda L. Streepy, City Clerk

APPROVED AS TO FORM:

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Ordinance No. 09-899  
Page 3 of 4

Loren D. Combs, City Attorney

Published: \_\_\_\_\_

Effective Date: \_\_\_\_\_

# CITY COUNCIL AGENDA BILL

City of Black Diamond  
Post Office Box 599  
Black Diamond, WA 98010

ITEM INFORMATION			
<b>SUBJECT:</b> <b>Ordinance 09-900, amending Chapter 2.24 of the Black Diamond Municipal Code, to clearly define the powers and duties of the Planning Commission</b>	<b>Agenda Date: April 16, 2009</b>		<b>AB09-039</b>
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		
	City Administrator –Gwen Voelpel		<b>X</b>
	City Attorney – Loren D. Combs		<b>X</b>
	City Clerk – Brenda L. Streepy		
	Finance – May Miller		
	Public Works – Seth Boettcher		
	Economic Devel. – Andy Williamson		
	Comm. Devel. – Steve Pilcher	<b>X</b>	
Cost Impact: N/A	Court – Kaaren Woods		
Fund Source: N/A	Natural Resources/Parks – Aaron Nix		
Timeline: N/A			
<b>Attachments: Ordinance No. 09-900</b>			
<b>SUMMARY STATEMENT:</b>  <p>The attached Ordinance is intended to provide clarification of which portions of the Black Diamond Municipal Code whose amendment will require the review and issuance of a recommendation by the Planning Commission prior to consideration by the City Council. The recommendation is to ensure the Commission’s involvement in those “land use” related Titles of the Code (Title 16 – Comprehensive Plan; Title 17- Subdivision Code; Title 18 – Zoning Code; and Title 19 – Environmental regulations). The changes also authorize the Commission to establish rules and procedures and clarifies that city staff will function as the secretary to the Commission.</p>			
<b>COMMITTEE REVIEW AND RECOMMENDATION: N/A</b>			
<b>RECOMMENDED ACTION: MOTION to adopt Ordinance No. 09-900 amending Chapter 2.24 of the Black Diamond Municipal Code relating to the powers and duties of the Planning Commission.</b>			
<b>RECORD OF COUNCIL ACTION</b>			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
April 16, 2009			

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY  
OF BLACK DIAMOND, KING COUNTY, WASHINGTON,  
AMENDING CHAPTER 2.24 OF THE BLACK DIAMOND  
MUNICIPAL CODE RELATING POWERS AND DUTIES  
OF THE PLANNING COMMISSION**

WHEREAS, pursuant to state statute, the City of Black Diamond previously created a Planning Commission to review certain types of land use policy issues and make recommendations to the City Council; and

WHEREAS, the city council wishes to have certain review functions previously assigned to the Planning Commission be handled instead by the city's Hearing Examiner; and

WHEREAS, chapter 2.24 needs to be amended to reflect which duties shall now be handled by the Planning Commission.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Section 2.24.010 of the Black Diamond Municipal Code is hereby amended to read as follows:

**2.24.010 Membership.**

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A. Pursuant to RCW Chapter 35A.63, there is created for the city a planning agency to be known as the city planning commission, consisting of seven members who shall be appointed by the mayor and confirmed by the city council.

B. The term of office of each member of the planning commission shall be six years. Those members holding office as of January 1, 1984 shall continue to hold office, together with those members appointed during 1984 to fill vacancies occurring as of the dates of their appointments. The positions shall be designated numbers one through seven. The terms of office shall be staggered such that the terms of office of those members holding positions one through five shall terminate as of December 31, 1984, 1985, 1986, 1987 and 1988 respectively. The terms of office of those members appointed to positions six and seven shall expire as of December 31, 1989. Subsequent terms of office shall run for six years from the date of expiration of the preceding term.

C. The planning commission may adopt rules and procedures to address the conduct of its meetings, election of officers, and other administrative matters.

D. Vacancies occurring otherwise than through the expiration of terms shall be filled for the unexpired terms. Members shall serve without compensation.

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Section 3. Section 2.24.020 of the Black Diamond Municipal Code is hereby amended to read as follows:

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#### **2.24.020 Powers and duties.**

A. The planning commission shall perform the function of a planning agency as set forth in RCW 35A.63, provided, certain land use matters may be referred to the city's hearing examiner as elsewhere provided by the Black Diamond municipal code. The planning commission shall be an advisory body to the city council on matters relating to the city's comprehensive plan and land use regulations, including additions and amendments thereto, and shall be specifically responsible for reviewing and making a recommendation to the city council regarding proposed amendments to all or any portion of Titles 16, 17, 18 or 19 of the municipal code, or potential annexation of lands into the city limits and the zoning to be assigned thereto.

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B. The planning commission shall review such other matters and take such further action as the city council may direct from time to time by motion, resolution, or ordinance.

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Section 4. Section 2.24.030 of the Black Diamond Municipal Code is hereby amended to read as follows:

#### **2.24.030 Secretary.**

The mayor shall designate a city staff member to serve as secretary to the planning commission. The secretary shall be responsible for taking the minutes of each commission meeting and for assisting the commission with other administrative duties as assigned by the presiding member of the commission.

Deleted: The planning commission may designate one of its members to act as secretary without salary, or if requested by the commission, the mayor shall designate a member of the paid city staff to act as secretary, in which case compensation shall be paid to the staff member at the rate provided for in the annual budget adopted by the city council. Alternatively, the commission may obtain a secretary who is not a member of the commission of the paid city staff who shall serve either without or for nominal compensation.

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Section 5. Severability. Each and every provision of this Ordinance shall be deemed severable. In the event that any portion of this Ordinance is determined by final order of a court of competent jurisdiction to be void or unenforceable, such determination shall not affect the validity of the remaining provisions thereof, provided the intent of this Ordinance can still be furthered without the invalid provision.

Section 6. Effective date. This Ordinance shall be in full force and effect five (5) days after publication as required by law. A summary of this Ordinance may be published in lieu of the entire Ordinance, as authorized by State law.

| Introduced on the 16th day of April, 2009.

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| Passed by the City Council on the 16th day of April, 2009.

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Mayor Howard Botts

ATTEST:

| Brenda L. Streepy, City Clerk

APPROVED AS TO FORM:

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Loren D. Combs, City Attorney

Published: \_\_\_\_\_

Effective Date: \_\_\_\_\_

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| Ordinance No. 09-900  
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# CITY COUNCIL AGENDA BILL

City of Black Diamond  
Post Office Box 599  
Black Diamond, WA 98010

ITEM INFORMATION			
<b>SUBJECT:</b>  <b>Resolution No. 09-592, declaring certain City property surplus</b>	<b>Agenda Date: April 16, 2009</b>		<b>AB09-040</b>
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		
	City Administrator –Gwen Voelpel		
	City Attorney – Loren D. Combs		
	City Clerk – Brenda L. Streepy		
	Finance – May Miller		
	Public Works – Seth Boettcher		<b>X</b>
	Capital Facilities – Kevin Esping	<b>X</b>	
	Police – Jamey Kiblinger		
Cost Impact:	Court – Kaaren Woods		
Fund Source:	Comm. Dev. – Steve Pilcher		
Timeline:			
<b>Attachments: Resolution No. 09-592, Attachment A (Surplus List)</b>			
<b>SUMMARY STATEMENT:</b>  The attached list of property is no longer of use to the operation of the City and needs to be declared surplus. Property will be disposed of by sale or auction to get the best possible dollar return.			
<b>COMMITTEE REVIEW AND RECOMMENDATION:</b>  			
<b>RECOMMENDED ACTION: MOTION to adopt Resolution No. 09-592, declaring certain City property surplus to the needs of the City.</b>			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
April 16, 2009			

**RESOLUTION NO. 09-592**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BLACK DIAMOND, KING COUNTY, WASHINGTON,  
DECLARING CERTAIN CITY PROPERTY SURPLUS TO  
THE NEEDS OF THE CITY**

**WHEREAS**, the City desires to dispose of personal property surplus to the needs of the City; and

**WHEREAS**, such property has accumulated over time in various storage areas; and

**WHEREAS**, all such property has been cataloged with all departments having the opportunity to review the listing; and

**WHEREAS**, City Council must deem the property to be surplus and authorize its disposal;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,  
WASHINGTON, DOES RESOLVE AS FOLLOWS:**

**Section 1.** The listing of certain City property is hereby declared surplus to the needs of the City of Black Diamond, as attached hereto as Exhibit A.

**Section 2.** City Council authorizes staff to make items available for sale either by sealed bid, online auction or other reasonable and allowable means.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,  
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 16TH DAY OF APRIL,  
2009.**

CITY OF BLACK DIAMOND:

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Howard Botts, Mayor

Attest:

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Brenda L. Streepy, City Clerk

Item Number	Serial #	Description	\$ Rec.	City #	Disposition	Date	Signature
1	2FALP71W4VX116496	1997 Ford Crown Victoria					
2		14 Lockers					
3	HDR9K21	Dell Computer		00536			
4		Logitek Keyboard		00599			
5	646957817	Brother Typewriter					
6	THG151435Y	HP Desk Jet Printer					
7	2ECN03PA24Z4	HP Scanner					
8	IFDKE30L9GHA48898	1986 Ford Aid Car					
9	364KFL300V	Motorola i560 Cell Phone					
10	354VFEM3Y9	Motorola i530 Cell Phone					
11	364VJLK2BV	Motorola i570					
12	364VEL9R70	Motorola i730					
13	831TBSSZVL	Motorola i1000 plus					
14	364VEWF7GQ	Motorola i530					
15	364VGA84W5	Motorola i530					
16	364VEL9S0B	Motorola i730					
17	364TGC2CT7	Motorola i560					
18	364VHYF2WD	Motorola i580					
19	364YEGBM53	Motorola i530					
20	364VFC847Y	Motorola i710					
21	07606753161	Blackberry					
22	7607021531	Blackberry					
23	07615409637	Blackberry					
24	7612220499	Blackberry					

Item #	Serial #	Description	\$ Rec.	City#	Disposition	Date	Signature
25	7607382313	Blackberry					
26		White Map Holder					
27		Maroon Filing Cabinet			Destroyed		
28	V730BQH28914	Compaq Preserio Laptop					
29	T0824ZA	Panasonic Toughbook					
30	T0824Z4	Panasonic Toughbook					
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