



**CITY OF BLACK DIAMOND**  
**September 16, 2010 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 360-886-2560. Thank you for attending this evening.

**PUBLIC HEARINGS:**

- 1) **AB10-073** – Proposed Amendments to the Zoning Code Mr. Pilcher
- 2) **AB10-074** – Proposed Amendments to Chapter 19.04, Environmental Policy Mr. Pilcher

*(Council Action May Follow Public Hearings)*

**APPOINTMENTS, PRESENTATIONS, ANNOUNCEMENTS:**  
**UNFINISHED BUSINESS:**

**NEW BUSINESS:**

- 3) **AB10-075** – Resolution Accepting Railroad Avenue Project as Complete Mr. Boettcher

**DEPARTMENT REPORTS:**

**MAYOR'S REPORT:**

**COUNCIL REPORTS:**

**ATTORNEY REPORT:**

**PUBLIC COMMENTS:**

**CONSENT AGENDA:**

- 4) **Claim Checks** – September 16, 2010, No.36051 through No.36054, No.36056 through No. 36107 (voided No. 36055) in the amount of \$227,621.47
- 5) **Payroll** – August 31, 2010, No.17231 through No. 17252 and ACH Pay in the total amount of \$271,501.95
- 6) **Minutes** – Council Meeting of September 2, 2010

**EXECUTIVE SESSION:**

**ADJOURNMENT:**

# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
<b>SUBJECT: Public hearing - Ordinance No. 10-XXX, amending various sections of Black Diamond Municipal Code, Zoning, regarding administrative processes, decision criteria and other misc. issues</b>	<b>Agenda Date:</b> September 16, 2010		AB10-073
	Department/Committee/Individual	Created	Reviewed
	Mayor Rebecca Olness		
	City Administrator –		
	City Attorney – Kenyon Disend		X
	City Clerk – Brenda L. Martinez		
	Finance – May Miller		
	Public Works – Seth Boettcher		
	Economic Devel. – Andy Williamson		
	Police – Jamey Kiblinger		
Timeline: Ordinance becomes effective 5 days after publication	Parks/Nat. Resources – Aaron Nix		
	Community Develop. – Steve Pilcher	X	
<b>Attachments: Ordinance No. 10-XXX (clean &amp; annotated versions)</b>			
<b>SUMMARY STATEMENT:</b> In June 2009, the City adopted its current Zoning Code. In using the code over the past year, staff discovered a number of matters it felt needed to be addressed to resolve both internal and external conflicts, provide for better processing, and address emerging issues. The Planning Commission subsequently considered, in separate actions, proposed amendments to Chapter 18.08 (administrative procedures) and amendments to other sections of the Zoning Code. After conducting public hearings on both amendment proposals, the Commission voted to recommend the Council adopt the proposed changes. The Council’s Planning and Community Services Committee subsequently also reviewed the amendments and agreed to move them forward to full Council.			
Major changes in Chapter 18.08 include deleting all references to the SEPA process, as that is addressed in BDMC 19.04; making all shorelines permits require Hearing Examiner review; and simplifying the various tables located in this chapter. <b>Both the Commission and Planning and Community Services Committee recommend retaining Hearing Examiner review of any proposed Development Agreement.</b>			
The remaining amendments clean-up erroneous cross references, resolve internal conflicts, and would authorize minor development standard changes. The annotated version of the ordinance includes comments regarding the various proposals.			
<b>COMMITTEE REVIEW AND RECOMMENDATION: Approval Planning &amp; Comm. Services; recommended for approval by City Planning Commission</b>			
<b>RECOMMENDED ACTION: MOTION to adopt Ordinance No. 10-XXX, amending Title 18 of the Black Diamond Municipal Code relating to administrative processes and other miscellaneous issues.</b>			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	
September 16, 2010			

## Chapter 18.08

### ADMINISTRATION: PROCEDURES, NOTICE & APPEALS

*Sections:*

18.08.010	Purpose
18.08.020	Supersedence
18.08.030	Decision Types
18.08.040	Ministerial Decisions – Type 1
18.08.050	Administrative Decisions – Type 2
18.08.060	Quasi-Judicial Decisions – Type 3
18.08.070	Quasi-Judicial Decisions – Type 4
18.08.080	Legislative Decisions – Type 5
18.08.090	<del>Quasi-Judicial</del> <u>City Council</u> Decisions – Type 6
18.08.100	Application
18.08.110	Determination of Completeness
18.08.120	Notice of Application
18.08.125	Notice Requirements Table
18.08.130	Consolidated Permit Process
18.08.150	Public Notice of Decision.
18.08.180	Notice of Public Hearing.
18.08.190	Effective Date of Decision
18.08.200	Appeal Structure
18.08.210	Administrative Appeals
18.08.220	Appeal Process
18.08.230	Judicial Review

**18.08.010 Purpose.**

The purpose of this chapter is to establish standard procedures, for public notification and the timing of development decisions made by the City of Black Diamond. These procedures are intended to:

- A. Promote timely and informed public participation;
- B. Eliminate redundancy in the application, permit review, and appeals processes;
- C. Process permits equitably and expediently;
- D. Balance the needs of permit applicants with ~~project neighbors~~ interested citizens;

*Comment: This recognizes that wider community interest is likely to exist than simply adjacent neighbors.*

- E. Ensure that decisions are made consistently and predictably; and
- F. Result in development that furthers City goals, objectives and policies as set forth in the Comprehensive Plan.

**18.08.020 — Supersedence.**

The provisions of this chapter supersede all other procedural requirements that may exist in other sections of the City Code. Where conflicts occur between provisions of this chapter and/or between this chapter and other City regulations, the requirements of this chapter shall apply.

*Comment: This section is proposed for deletion in order to avoid potential conflicts. Council may recall this was pointed out as being problematic in January when the SEPA regulations were amended.*

**18.08.030 Decision types.**

There are six types of decisions, actions, or permit applications that are reviewed may be made under the provisions of this title. The types are based on who makes the decision, the amount of discretion exercised by the decision making individual or body, the level of impact associated with the decision, the amount and type of public input sought, and the type of appeal opportunity. This chapter sets forth procedural requirements for applications, decisions, and appeals. Decision criteria and additional standards for specific permit types and for GMA legislative decisions are set forth in chapter 18.12. Decision types are summarized below; not all permits are listed. ;

*Comment: These changes clarify the distinction between decisions and permit types and also add a clause at the end to note there may be other types that may not be listed here.*

<b>Decision Type</b>	<b>Decision Maker(s)</b>	<b>Types of Permits</b>
Type 1 – Ministerial	Director	Boundary-Lot line adjustment Building permit Final short plat Shoreline exemptions Temporary use permits Use interpretation
Type 2 – Administrative	Director or SEPA Responsible Official	Accessory dwelling unit Administrative conditional use Administrative variance Binding site plan Sensitive area buffer reduction and reasonable use exception Formal code interpretation SEPA threshold determination Preliminary short plat Site plan minor amendment review
Type 3 – Quasi-Judicial	Hearing Examiner	Conditional use permit Plat alteration or vacation Preliminary plat Shoreline substantial development, conditional, use or variance Variance Site Plan Review Site plan major amendment Sensitive Areas exceptions
Type 4 – Quasi-Judicial	Hearing Examiner/City Council	Development agreements Master Planned Development Rezoning (site specific)
Type 5 – Legislative	Planning Commission/ City Council	Comprehensive Plan amendments (text or map) Area-wide rezoning Zoning Code text amendments
Type 6 – Quasi-judicial	City Council	Final Plat acceptance LID/ULID final assessment rolls

**Comment: All references to SEPA are being deleted from Chapter 18.08, as the SEPA process is contained within 19.04. Proper terminology is included. The City**

Attorney recommends including LID/ULID as Type 6 decisions. The Planning Commission considered, but did not recommend, removing the Hearing Examiner from the Development Agreement process (Type 4).

If a proposal requires multiple permits with decisions of different types (e.g., site plan approval and conditional use permit, Type 2 and Type 3), the higher type process applies to the entire proposal. Refer to 18.08.130.

#### **18.08.040 Ministerial decisions – Type 1.**

- A. Type 1 decisions are based on compliance with specific, nondiscretionary and/or technical standards that are clearly enumerated in the ~~City Code~~. These decisions are made by the director, are exempt from notice requirements, and are final actions. Type 1 decisions ~~of the director~~ may be appealed to the Hearing Examiner and then to Superior Court ~~(excepting building permits and related technical code decisions)~~.
- B. The following decisions, actions and permit applications require a Type 1 decision:
  - 1. Building permits and related technical code applications referenced in BDMC Title 15 (fire, mechanical, plumbing, etc)
  - 2. ~~Boundary~~ Lot Line Adjustments
  - 3. Use interpretation
  - 4. Shoreline exemptions
  - 5. Final short plat
  - 6. Temporary use permit

*Comment: The Building Code process is contained within Title 15, so is cross-referenced here.*

#### **18.08.050 Administrative decisions – Type 2.**

- A. The Director makes Type 2 decisions based on standards and clearly identified criteria. Type 2 decisions require written documentation that the proposal meets all applicable City standards or is appropriately conditioned to meet requirements. The supporting documentation may be in the form of a checklist, letter, staff report, or combination of forms, reports and checklists.
- B. Type 2 decisions require public notice as set forth in Section 18.08.120.
- C. Type 2 decisions are subject to an administrative appeal to the Hearing Examiner unless specifically modified or excluded pursuant to this Section.
- D. ~~Shoreline substantial development permits and shoreline variances may be appealed only to the State Shorelines Hearings Board.~~
- E. ~~Administrative appeals of SEPA threshold determinations of significance (DS) are not allowed.~~
- F. ~~Administrative appeals of the adequacy of an environmental impact statement are not allowed.~~

~~G. Appeal of a SEPA decision associated with a Type 5 legislative action is allowed only in conjunction with appeal of the decision to the Growth Management Hearings Board.~~

~~H. The following decisions, actions and permit applications require a Type 2 decision:~~

- ~~1. SEPA threshold determinations / Use approval with SEPA~~
- ~~2. Preliminary short plat~~
- ~~3. Accessory dwelling unit~~
- ~~4. Administrative Conditional Use Permit (ACUP)~~
- ~~5. Administrative Variance~~
- ~~6. Critical Sensitive Areas Reasonable Use Exception~~
- ~~7. Formal code interpretation~~
- ~~8. Binding site plan~~
- ~~9. Site plan minor amendment review~~

*Comment: All shorelines permits are recommended to be Type 3 decisions requiring Hearing Examiner review. If dissatisfied with his decision, it may be appealed to court. This section also deletes another reference to the SEPA process.*

#### **18.08.060 Quasi-judicial decisions – Type 3.**

- A. Type 3 decisions are made by the Hearing Examiner following an open record public hearing and involve the use of discretionary judgment in the review of each specific application.
- B. Type 3 decisions require public notice as set forth in Sections 18.08.120.
- C. For each Type 3 decision, the Department will forward a recommendation to the Hearing Examiner regarding whether the proposal is consistent with applicable City regulations and policies and whether the proposal should be approved, approved with modifications or conditions, or denied. The Examiner will issue a written decision including findings, conclusions, and conditions, if any.
- D. The ~~Department~~ Director may require an applicant to participate in a public meeting to provide information and take public comment before the department forwards a recommendation to the Hearing Examiner.
- ~~E. Any administrative appeal of a SEPA threshold determination of non-significance (DNS), mitigated determination of non-significance (MDNS) or other Type 2 decision shall be consolidated with the open record public hearing on a Type 3 proposal.~~
- F. A Type 3 decision may be appealed to ~~the~~ Superior Court, except that a Type 3 decision on a shoreline application may be appealed only to the State Shorelines Hearings Board. (See also 18.08.200 regarding consolidated permit processing and appeals).
- G. The following decisions, actions, and permit applications require a Type 3 decision:
  1. Preliminary plat
  2. Conditional Use Permit
  3. Shoreline, substantial development, conditional use permit or variance
  4. Plat alteration or vacation
  5. Site plan approval or major amendment

6. Variance
7. Sensitive Areas Exceptions

*Comment: Another deletion of a SEPA reference and addition of the SAO exception process (for which the Examiner has already conducted a hearing).*

#### **18.08.070 Quasi-judicial decisions – Type 4.**

- A. Type 4 decisions are made by the City Council following a closed record hearing based on a recommendation from the Hearing Examiner. Type 4 decisions proceed in the same way as Type 3 decisions, except that:
  1. The Hearing Examiner makes a recommendation to the City Council rather than making a decision.
  2. The City Council holds a closed record hearing to consider the recommendation from the Hearing Examiner. Only parties of record who testified at the Hearing Examiner hearing may speak at the closed record hearing; however, testimony is limited to discussion about the recommendation from the Hearing Examiner. All argument and discussion must be based on the factual record developed at the Hearing Examiner open record hearing.
  3. The City Council ~~will~~shall decide the application by motion and ~~will~~shall adopt formal findings and conclusions approving, denying, or modifying the proposal.
  4. Appeal of the City Council decision is to Superior Court. ~~There is no administrative appeal.~~
- B. Type 4 decisions require public notice as set forth in Sections 18.08.120.
- C. The following decisions, actions and permit applications require a Type 4 decision:
  1. Rezone (site specific)
  2. Development agreement
  3. Master Planned Development

#### **18.08.080 Legislative decisions – Type 5.**

- A. Type 5 decisions are legislative, non-project decisions made by the City Council under its authority to establish substantive policies and regulations pursuant to the Growth Management Act. Type 5 decisions do not include legislation of a procedural nature such as the adoption of fee ordinances or technical issues such as adoption of building codes, engineering standards and related matters.
- B. Type 5 decisions require public notice as set forth in Section 18.08.120 and a public hearing before the ~~City Planning Commission, who~~which will make a recommendation to the City Council, ~~and broad public outreach prior to a decision by the City Council.~~
- C. There is no administrative appeal of Type 5 decisions, but they may be appealed to the Washington State Growth Management Hearings Board.
- D. The following actions require a Type 5 decision:
  1. Comprehensive Plan Amendment (text or future land use map)
  2. Sub-area plan adoption or amendment
  3. Area-wide rezone
  4. Amendment of the Zoning ~~code~~Code or other development regulations.

*Comment: Basically clean-up of wording, but proposed deletion of Council conducting broad public outreach (that is the role of the Planning Commission).*

**18.08.090 Quasi-judicial City Council decisions - Type 6.**

- A. Type 6 decisions are quasi-judicial decisions or other decisions, not necessarily requiring the filing of a project permit application, made by the city-City Council Council following a recommendation by staff.
- B. Type 6 decisions include, but are not limited to, the following ~~project applications~~:
  - 1. Final plat approval;
  - 2. Final assessment roll hearings for local improvement districts and utility local improvement districts.

*Comment: Adding in LID/ULID process.*

**18.08.100 Application.**

- A. Who may apply:
  - 1. The property owner or an agent of the owner with authorized proof of agency may apply for a Type 1, 2, 3, ~~or 4~~ or 5 decision. Eligibility and procedures for amending the comprehensive plan are found in BDMC Title 16., or for a site-specific Comprehensive Plan Amendment.
  - 2. The Mayor, Planning Commission, or City Council may initiate a site-specific rezone (a Type 4 decision) for City-owned or managed property, or an area-wide rezone, a Comprehensive Plan Amendment, or an amendment to the text of the Zoning Code (Type 5 decisions).
  - 3. Any person may propose a text or map amendment to the Comprehensive Plan or request that the City initiate an area-wide rezone, or amendments to the text of the Zoning Code. Procedures for amending the Comprehensive Plan are outlined in BDMC 16.30.
- B. All applications for Type 1, 2, 3, 4, 5 or 6 decisions, actions, or permits shall be submitted on official forms or as prescribed and provided by the Department and be accompanied by the required filing fee.
- C. The Department shall establish, and may revise from time to time, submittal requirements for each type of application.
  - 1. Individual submittal requirements may be waived by the Director, in writing, only if the applicant can demonstrate that normally required information is not relevant to the proposed action and is not required to show that an application complies with applicable City codes and regulations.
  - 2. For project permit applications, the submittal requirements established by the Director shall include a target turn-around period for initial review and an estimate of average turn-around times for permit issuance. Such time periods shall be established administratively and included in application submittal requirements available to the public, but shall not exceed one hundred twenty (120) days.

*Comment: Added text to cross-reference the Comp Plan amendment process in Title 16.*

**18.08.110 Determination of completeness.**

- A. An application for a Type 1, 2, 3, ~~4 or 4 or 6~~ decision shall be determined complete when all information required in the applicable submittal requirements has been provided in a manner sufficient for processing the application. Additional information may be required by the City even though an application has been determined to be complete for processing.
- B. The City may, at its discretion and at the applicant's expense, retain a qualified professional to review and confirm the applicant's reports, studies and plans.
- C. If an application is determined to be incomplete, the City will mail written notification to an applicant of what information or material must be submitted to make the application complete. Notice that an application is not complete shall be mailed within 28 days of receiving the application.
- D. The City may choose to notify an applicant by mail, telephone or email that an application is complete. If the City does not notify the applicant of completeness or incompleteness within 28 days of submitting the application, the application shall be considered complete on the 29th day.

**18.08.120 Notice of application.**

- A. Within 14 days of the determination of completeness, the City shall issue a notice of application for all Type 2, 3, and 4 applications.
- B. The notice of application shall include the following information:
  - 1. The dates of application, determination of completeness, and the date of the notice of application;
  - 2. The location and description of the project;
  - 3. A list of project permits included in the application and identification of other required permits, to the extent known by the department;
  - 4. The identification of existing environmental documents that evaluate the proposal and the location where the application and any other relevant materials can be reviewed;
  - 5. The date, time, and place of an open record hearing, if one is required and has been scheduled;
  - 6. The name of the applicant or project contact and the name of the City staff person assigned to the project, along with City staff contact information;
  - 7. A statement of the public comment period, which shall be 14 days, except for shoreline substantial development, shoreline variance, or shoreline conditional use permit applications, which shall have a 30-day comment period for notice of application;
  - 8. A statement of the rights of individuals to comment on the application, receive notice, participate in any hearings, request a copy of the decision (once made) and a summary of any appeal rights; and
  - 9. Any other information the City determines to be appropriate.

C. The notice of application shall be made available to the public by one or more of the following methods, as specified for each permit application type in Table 18-1:

1. Mail. Mailing to owners of real property located within 300 feet of the subject property. If the owner of the property that is the subject of the application owns other real property adjacent to the subject property, then the 300-foot measurement shall be taken from the boundary of any such adjacently located parcels. This distance shall be increased to 500 feet for a Master Planned Development;
2. Publish. Publishing in the official City newspaper of record.
3. Post. Posting the property with a sign or placard as required by the department.
4. Online. Publishing or posting on the City’s website a notice of the application. If online method is used, the Department will either establish a specific calendar for online publishing or will maintain an email distribution list to alert interested parties that a new proposal has been applied for.
5. Other. Other methods of notice are supplementary to some primary method and may include press releases, notices to community newspapers, notifying public or private groups known to have an interest in an area or certain type of proposal.

**18.08.125 Notice requirements table.**

A. Notice shall be provided using the following methods for each decision type. Specific applications with unique noticing requirements are noted individually.:

**Table 18-1**

Application	Process Type	Mail	Publish	Post	Online	Other
SEPA Threshold Determination / Use Approval with SEPA, Draft and Final EIS/SEIS publication	Type 2	X	X	X	X	
Short Subdivision	Type 2	X	X	X	X	
Variance	Type 2	X	X	X	X	
Shoreline Variance	Type 2	X	X	X	X	
Shoreline Substantial Development Permit	Type 2	X	X	X	X	
Administrative Conditional Use	Type 2	X	X	X	X	
Critical Areas Reasonable Use Exception	Type 2	X	X	X	X	
Formal Code Interpretation	Type 2		X		X	X
Binding site plan approval	Type 2	X	X	X	X	
Site plan minor amendment	Type 2	X	X	X	X	
Preliminary Subdivision (Plat)	Type 3	X	X	X	X	
Plat Alteration or Vacation	Type 3	X	X	X	X	
Conditional Use Permit	Type 3	X	X	X	X	
Shoreline Conditional Use	Type 3	X	X	X	X	

Permit						
Site plan approval, or major amendment	Type 3	X	X	X	X	
Master Planned Development	Type 4	X	X	X	X	X
Rezone	Type 4	X	X	X	X	
Development Agreement	Type 4	X	X		X	X
Comprehensive Plan Amendment (map or text)	Type 5	X	X	X	X	X
Zoning Code Text Amendment	Type 5	X			X	X

Decision Type	Mail	Publish	Post	Online	Other
Type 1	NA	NA	NA	NA	NA
Type 2 • Formal code interpretation	X	X X	X	X X	X
Type 3	X	X	X	X	
Type 4	X	X	X	X	X
Type 5 • Zoning Code text amend.	X	X X	X	X X	X
Type 6 • Final Plat • Other	X	X	X	X X	X

*Comment: The table is simplified to various decision types, rather than listing all potential application/permit types.*

**18.08.130 Consolidated permit process.**

- A. If a project requires more than one type of land use application, the applications shall be processed concurrently unless the applicant ~~director determines~~ demonstrates that

separate processing will result in a more efficient or effective review process. The Director may, however, require consolidated processing when concerns exist about cumulative impacts, inappropriate piece-mealing of the project, or when decision makers need clarity about later phases of a final development proposal.

*Comment: Staff should determine situations when consolidation will not be required, which could be done at the request of an applicant or, alternatively, without a request.*

- B. Type 5 applications may not be consolidated with related project permit applications.
- C. Consolidation of review processes shall modify decision making authority and appeal procedures only as follows.
  - 1. When review of a Type 1 application is consolidated with a Type 2 or higher application, no change in decision making or appeal processes will occur. The effective date of the Type 1 decision shall be no sooner than the date of final City action on the related Type 2 or higher application.
  - 2. When a Type 2 application is consolidated with a Type 3 or Type 4 application, no change in decision making or appeal processes will occur, except that shoreline applications (variance or substantial development permits) shall be decided by the higher level decision maker. Appeals of Type 2 decisions shall be consolidated into the required open record public hearing for the Type 3 or Type 4 decision.
  - 3. When a Type 3 application is consolidated with a Type 4 application, the Type 3 decision shall be made as part of the Type 4 application.

**18.08.150 Public notice of decision.**

- A. Each Type 2, 3, or 4 decision shall be made in writing. The form of a Type 2 decision may be a checklist, annotated checklist, letter, report, memo, or combination of forms. Type 3 and Type 4 decisions shall include findings and conclusions in support of the decision.
- B. Notice of each Type 2, 3, or 4 decision shall be mailed to:
  - 1. The applicant and applicant's contact person;
  - 2. Each person who submitted a comment on the proposal during the public comment period;
  - 3. Each person who spoke at any required public hearing; and
  - 4. Each person who requested notice of the decision or who has requested notification of all permit decisions.
- C. Notice of a decision shall include a description of how to appeal the decision.

**18.08.180 Notice of public hearing.**

Notice of the time and place of an open record hearing for Type 3 and 4 applications shall be provided by the Department no less than 14 days prior to the hearing, through use of the same methods indicated for notice of application. See 18.08.120 and 18.08.125.

**18.08.190 Effective date of decision.**

Type 1 decisions shall be effective on the date the decision is made. Type 2 and 3 decisions shall be effective at the close of the appeal period, or if appealed, on the date of final City action on the appeal. Type 4 decisions are effective on the date final findings and conclusions are adopted by the City Council. Type 5 and 6 decisions are effective on the date of passage of the ordinance or resolution regarding the application by the City Council, or on a later date as may be specified in the resolution or ordinance.

**18.08.200 Appeal structure.**

Table 18.08.200-1 provides a summary of the appeal structure for Type 1- 5 applications.

**Table 18.08.200-1 Summary of Appeal Structure**

Process Type	Decision maker	Appeal to	Further appeal
Type 1, except building permit appeals	Director	Hearing Examiner	n.a.
Type 2, except shoreline applications	Director	Hearing Examiner	Court
Type 3, except shoreline applications	Hearing Examiner	Superior Court	Court
Type 4 and 6	City Council	Superior Court	n.a.
Type 5	City Council	Growth Management Hearings Board (GMHB)	Court
Type 2 Shoreline applications	Director	Shorelines Hearings Board	Court
Type 3 Shoreline application	Hearing Examiner	Shorelines Hearings Board	Court

Note that a consolidated permit process may change the initial decision maker for Type 2 shoreline applications and for Type 3 applications consolidated with Type 4 applications.

*Comment: The building permit appeal process is detailed in Title 15. Shorelines permit applications are recommended to be Type 3 decisions. Needed to add Type 6 decisions to those Council decisions that could be appealed to court.*

**Table 18.08.200-2 SEPA Appeal Structure**

SEPA Action	Decision-maker	Appeal to	Further Appeal
a. Determination of Non-Significance			

(DNS), Mitigated Determination of Non-significance (MDNS) for:			
Type 1, 2, 3, 4 decisions	Director/Responsible Official	Court	
Type 5 decisions	Director/Responsible Official	GMHB	Court
B. EIS Adequacy:			
Type 1, 2, 3 decisions		Court	
Type 4 or 5 decisions		City Council	GMHB and/or Court

**18.08.210 Administrative appeals.**

- A. Who may appeal. Any aggrieved party of record may file an administrative appeal of a Type 1, 2 or Type 3 decision.
- B. Time and place to appeal. Appeals of a Type 1, 2 or 3 decision shall be addressed to the hearing examiner and filed in writing with the department within 14 calendar days of the notice of decision, except for shoreline appeals and appeals associated with a SEPA comment DNS.
- C. Shoreline appeals. Appeals of a shoreline substantial development permit, shoreline conditional use permit, or shoreline variance decision shall be filed with the state shorelines hearings board pursuant to RCW 90.58.180.
- ~~D. SEPA Determination of Nonsignificance (DNS) or Mitigated Determination of Nonsignificance (MDNS). When a SEPA DNS or MDNS is issued pursuant to WAC 197-11-340 or 350, appeals of the DNS/MDNS and any associated Type 2 decision shall be filed within 14 days of the notice of decision.~~
- E. Fees. Each appeal filed on a non-shoreline decision shall be accompanied by a filing fee in the amount established in the City’s schedule of fees.
- F. Form of appeal. A person appealing a Type 1 decision must file a written statement setting forth:
  - 1. Facts demonstrating that the person is aggrieved by the decision;
  - 2. A concise statement identifying each alleged error and the manner in which the decision fails to satisfy the applicable decision criteria. ~~An appeal of a SEPA environmental document shall describe any alleged inadequacy in the threshold determination with respect to evaluation of a specific environmental element;~~
  - 3. The specific relief requested; and
  - 4. Any other information reasonably necessary to make a decision on appeal.
- ~~G. G. Limitation on new appeal issues. No new substantive appeal issues may be raised or submitted after the close of the time period for filing of the original appeal. The hearing examiner may allow an appellant not more than 15 days to perfect an otherwise timely filed appeal.~~

*Comment: As previously noted, all references to the SEPA process are being eliminated, as BDMC 19.04 addresses this process.*

**18.08.220 Appeal process.**

- A. Within 14 calendar days following timely filing of an administrative appeal, the department shall mail notice of the date, time and place for the appeal hearing to all parties who received notice of the decision.
- B. Appeals shall be heard and decided within 90 days from the date the appeal is filed, unless the hearing examiner determines by written findings that a specified amount of additional time is necessary because the matter is of unusual complexity or scope or for other good cause shown. The period of time for hearing and deciding an appeal shall be excluded in calculating the 120 period for permit issuance established pursuant to BDMC 18.08.100 or state law.
- C. The hearing shall be limited to the issues included in the written appeal statement. Participation in the appeal shall be limited to the City, the applicant, and those persons or entities which have timely filed complete written appeal statements and paid the appeal fee.
- D. The appellant shall carry the burden of proof in the appeal. The burden of proof shall be met by a preponderance of the evidence in order for the appellant to prevail; provided that in any appeal of a SEPA decision, the decision of the department shall be given substantial weight and may be overturned only if it is clearly erroneous.

**18.08.230 Judicial review.**

- A. No person may seek judicial review of any decision of the City, unless that person first exhausts the administrative remedies provided by the City.
- B. Any judicial appeal shall be filed in accordance with State law. If there is not a statutory time limit for filing a judicial appeal, the appeal shall be filed within 21 calendar days after a final decision is issued by the City.

*Comment: The three proceeding sections propose deletions to the SEPA process, as this is addressed in Chapter 19.04.*

**18.04.120 Building permit required.**

No building or other structure shall be erected, moved, added to, or structurally altered without a permit issued by the director. No building permit shall be issued unless the use:

- A. Conforms to the requirements of this title; or
- B. Has been approved by the director as a *similar or related* use as described in the several zoning districts; or
- C. Has been approved by the hearing examiner as a conditional or special-use as defined in Chapter 18.28 of this title; or
- D. Has been granted a variance by the hearing examiner.

*Comment: There are no "special uses" or "special use permit" defined in the code; therefore, this reference is unnecessary.*

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**18.04.130 Enforcement and violations.**

- A. Enforcement. The director shall administer and enforce this title. If the director finds that any of the provisions of this title are being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. He shall take any action authorized by this title to insure compliance with or to prevent violation of its provisions.

B. B.——Violation-Penalty. Whoever violates any of the provisions of this title shall be fined not more than five hundred dollars for each offense. Each day a violation continues may be considered as a separate offense. A violation of this title shall constitute a misdemeanor. In the event an individual or legal entity does not correct the violation within thirty days of receiving notice of the violation, and in addition to the misdemeanor and potential fine, the city, at its discretion, shall seek to stop the violation through civil action in the appropriate courts in the state. In the event a civil action is necessary to abate the violation, the violator shall be responsible for reimbursing the city for all costs including legal fees and court expenses incurred by the city due to the necessity of bringing the action. In addition, the city shall have a lien for any criminal or civil penalty or cost of any work of abatement, against the real property on which the civil penalty was imposed and against any works performed. The civil penalty and/or criminal penalty and cost as set forth herein shall also be the personal obligation of the property owner. The city attorney for the city, on behalf of the city, may collect the civil penalty and criminal penalty and the costs of abatement by use of all appropriate legal remedies. No lien created by this title shall bind the property subject to the lien for a period longer than three years after the claim has been filed with the King County department of records and elections unless an action is commenced in the proper court within that time to enforce the lien. The lien provided for in this section may be foreclosed and enforced by civil action in a court having jurisdiction. Any violation of any of the provisions of this title shall be subject to code enforcement action pursuant to BDMC 8.02.

Comment: Code enforcement provisions are contained within BDMC 8.02, which was adopted independent of the Zoning Code.

## Chapter 18.12 DECISION CRITERIA FOR PERMITS

*Sections:*

- 18.12.010      **Conditional Use & Administrative Conditional Use Permits**
- 18.12.020      **Zoning Reclassification (Rezone)**
- 18.12.030      **Variances**
- 18.12.040      ~~Preliminary plats & Short plats~~
- 18.12.060      ~~Development Agreements~~
- 18.12.070      ~~Comprehensive Plan Amendments~~
- 18.12.010      ~~Conditional use & administrative conditional use permits.~~

Comment: Preliminary plat & short plat criteria is located in Title 17; the Development Agreement criteria isn't really decision criteria and is otherwise addressed in the Dev. Agreement chapter of the Code; Comprehensive Plan amendment criteria is addressed in Title 16; the second 18.12.010 in the list is a typographical error.

- A. Purpose. Conditional uses, which are identified in various zones in this Title, are those uses which require additional review and special conditions to ensure that they are compatible with their site and surrounding area. This chapter sets forth the criteria that the City will use to review such proposals.
- B. Criteria. The City, whether the director or the hearing examiner in the appropriate case, will consider the following criteria in reviewing conditional use permit applications, and may only approve an application if the applicant demonstrates that all of the criteria are met:
  - 1. The proposal is consistent with the goals and policies of the Comprehensive Plan;
  - 2. Environmental and operational impacts associated with the use can be adequately mitigated through the imposition of reasonable conditions;
  - 3. The use is designed so as to be compatible with the character of the surrounding area;
  - 4. The location, size and height of buildings, structures, walls and fences and screening vegetation for the conditional use will not hinder permitted development or discourage the use of neighboring properties;
  - 5. The conditional use is designed in a manner that is compatible with the physical characteristics of the subject property;
  - 6. It is not in conflict with the health and safety of the community;
  - 7. Pedestrian and vehicle traffic associated with the use will not be hazardous or conflict with existing and anticipated traffic in the neighborhood; and

- 8. The conditional use will be supported by adequate public services and facilities, including any services and facilities that the applicant funds or provides.
- C. Process. Consideration of conditional use and administrative conditional use permit applications shall follow the procedures in Chapter 18.08.
- D. Essential Public Facilities. In addition to the criteria set forth in Chapter 18.58, essential public facilities are also subject to the criteria of this section.

**18.12.020 Zoning reclassification (rezone) & zoning text amendments.**

- A. Purpose. A reclassification of property or rezone is a mechanism through which the City can ensure that development occurs consistent with the Comprehensive Plan. It also recognizes that conditions applicable to individual properties may change over time in response to new or differing land use needs or practices, or new land use policies. A zoning text amendment is a mechanism for ensuring consistency between the Comprehensive Plan and development regulations, and a means to recognize new land use policies, implementing techniques, or land use practices.
- B. Criteria – Map Amendments. The City will consider the following criteria in reviewing applications for zoning reclassifications, and may only approve an application if the applicant demonstrates that all of the criteria are met:
  - 1. The proposal is consistent with the goals and policies of the Comprehensive Plan, and with the Future Land Use Map;
  - 2. The subject property is suitable for development in conformance with the standards applicable to the requested zoning designation.
  - 3. ~~Environmental impacts associated with the use can be adequately mitigated through the imposition of reasonable conditions;~~  
*Comment: the SEPA process addresses environmental impacts; does not need to be repeated here. Also, this would imply there might be site-specific conditions of rezone approval imposed, which are difficult to track over time and generally, should not be imposed.*
  - 4. The proposal will not be materially detrimental to properties in the immediate vicinity or the community based on the range of uses allowed in the proposed zoning classification;
  - 5. Adequate services and facilities, including transportation facilities, will be available to serve the range of uses permitted in the proposed zoning classification;
  - 6. The proposed reclassification is warranted because of a change in circumstances, or because of a demonstrated need for additional land within the proposed zoning classification;
  - 7. The reclassification does not reflect special treatment of the subject property; and
  - 8. The reclassification will promote the general health, safety and welfare of the community.
- C. Criteria – Text Amendments. The City will review proposed amendments to the text of the zoning code using the following criteria:
  - 1. The amendment is consistent with and furthers the goals and policies of the Comprehensive Plan;

2. Amendment of the text of the code would not render the zoning code internally inconsistent;
  3. The amendment corrects an error or omission in the text of the code; and/or
  4. The amendment does not result in the grant of a special privilege to an individual property owner.
- D. Process. Consideration of reclassification and text amendment applications shall follow the procedures in Chapter 18.08.

**18.12.030 Variances.**

- A. Purpose. A variance is a mechanism whereby the City may allow variations to the provisions of the zoning code applicable to a specific property where unique conditions exist and make compliance with zoning standards impractical or an unnecessary hardship. A variance is not appropriate, and shall not be granted, to change a use or to allow establishment of a use that is not otherwise permitted in the zone in which the proposal is located.
- B. Criteria. The City will consider the following criteria in reviewing applications for variances, and may only approve an application if the applicant demonstrates that all of the criteria are met:
1. Granting of the proposed variance would not allow a use which is not classified as a permitted, accessory, or conditionally permitted use in the applicable zoning district;
  2. The variance is necessary because of special circumstances relating to the unique size, shape, topography, location or surroundings of the subject property;
  3. The need for the variance and the special circumstances applicable to the subject property are not the result of deliberate actions of the applicant or property owner;
  4. Strict enforcement of the requirements of this title creates an unnecessary hardship to the property owner or would deprive the property owner of the rights commonly enjoyed by others in the same area;
  5. The variance does not create health or safety problems, will not be injurious to the public welfare, and does not grant a special privilege to the property owners;
  6. The variance from height or setback requirements does not infringe upon or interfere with the requirements of any easement or covenant; and
  7. The variance is the minimum necessary to grant relief to the applicant.
- C. Administrative Variance. An administrative variance may be granted if the application complies with the following criteria:
1. The variance would not decrease by more than twenty (20) percent any required front, side or rear yard between buildings;
  2. The variance would not increase by more than ten (10) percent any permitted projection of cornices, sills, eave projections, fences or structures, maximum permitted lot coverage, and unenclosed and uncovered decks into a front, side or rear yard; or
  3. The variance would not increase by more than ten (10) percent the permitted height of a structure.

4. Strict enforcement of the requirements of this title creates an unnecessary hardship to the property owner or would deprive the property owner of the rights commonly enjoyed by others in the same area;
  5. The variance would not create health or safety problems, will not be injurious to the public welfare, and does not grant a special privilege to the property owner;
  6. The variance is the minimum necessary to grant relief to the applicant.
- D. Granting of a variance shall not relieve an applicant from complying with any other standard or requirement of this Title unless and only to the extent that such standard or requirement is specifically addressed as part of the decision on the requested variance.
- E. Process. Consideration of variance requests shall follow the procedures in Chapter 18.08.

**18.12.040 — Preliminary plats & short plats.**

- A. ~~The City will consider the following criteria in reviewing applications for preliminary plats and short plats, and may only approve an application if the applicant demonstrates that all of the criteria are met:~~
1. ~~The proposal is consistent with the goals, policies and map designations of the Black Diamond Comprehensive Plan;~~
  2. ~~The proposed lots sizes are consistent with those allowed within the applicable zoning classification and is consistent with applicable development standards and requirements of this title;~~
  3. ~~The subdivision or short subdivision adequately provides for the following facilities: open spaces, drainage ways, streets, roads, alleys, other public ways, transit stops (where applicable), potable water supplies, sanitary wastes, parks and recreation, playgrounds, sites for schools and school grounds, fire protection, other public facilities and utilities, and consideration of other relevant factors;~~
  4. ~~The layout of lots, and their size and dimensions take into account topography and vegetation on the site, and the presence of regulated critical areas;~~
  5. ~~The preliminary plat or short plat promotes the public health, safety, and general welfare;~~
  6. ~~The proposal satisfies the requirements of Title 17 BDMC and any other criteria properly considered by the decision maker.~~
- B. ~~Consideration of proposed preliminary plats and short plats shall follow the procedures of BDMC 18.08.~~

**18.12.060 — Development agreements.**

- A. Purpose. ~~RCW 36.70B.170 et seq authorizes the City to enter into development agreements with property owners. Development agreements are intended to be used to address and establish development standards, mitigation requirements, vesting provisions and review procedures that will apply to and govern large, complex and/or phased development proposals located within the City during the term of any agreement.~~
- B. ~~Development Standards Subject to Agreement. Any development agreement shall be consistent with applicable City development regulations except as such regulations~~

may be modified in the development agreement. For purposes of this chapter, “development standards” include but are not limited to:

1. Project elements such as uses, densities and intensities of land uses and buildings;
2. Mitigation measures, conditions and other requirements identified pursuant to RCW 43.21C;
3. Design standards such as maximum heights, setbacks, landscaping and other development features;
4. Road and sidewalk standards;
5. Affordable housing;
6. Water, sewer, storm drainage, water quality, and other infrastructure and utility requirements;
7. Parks and open space preservation, and recreation facilities;
8. Phasing of development and construction;
9. Development review processes, procedures and standards for implementing decisions, including methods of reimbursement to the city for review processes;
10. A build-out or vesting period for applicable development standards;
11. A process for amending the development agreement; and
12. Any other appropriate development requirement or procedure.

C. ~~Conformity with Standards.~~ During the term specified in the development agreement, a development permit or approval issued by the City for the subject property shall be consistent with the standards contained in such agreement. The standards contained in the development agreement shall govern during the term of the agreement and may not be subject to an amendment of City development standards or regulations adopted after the effective date of the development agreement. Provided, that the development agreement shall reserve to the City the authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

D. ~~A development agreement shall be recorded with the real property documents of King County. During the term of the agreement, it shall be binding on the parties and their successors, including a city that assumes jurisdiction through incorporation or annexation of the area or property subject to the development agreement. Unless terminated, the agreement shall be enforceable by a party to the agreement.~~

E. ~~A development agreement shall be reviewed and adopted following a public hearing pursuant to the procedures and requirements set forth in Chapter 18.08.~~

#### **18.12.070 — Comprehensive plan amendments.**

A. ~~Decision Criteria.~~ The Planning Commission and City Council shall consider the following criteria in their review of proposed map or text amendments to the Comprehensive Plan:

- 1. Consistency with the Growth Management Act;
- 2. Consistency with the King County Countywide Planning Policies and other regional or inter-jurisdictional plans or agreements;
- 3. Consistency with the policies of the Comprehensive Plan, particularly land use, natural environment, transportation, capital facilities, public service and utilities;
- 4. Furtherance of the Plan’s vision statement;
- 5. Compatibility with adjacent land uses and Land Use Map designations;

- ~~—6. Impacts to the natural environment; and~~
- ~~—7. Whether adopted development regulations will address anticipated impacts of the proposed amendment, or whether additional conditions or regulations are necessary.~~
- B. ~~Process. Additional requirements and procedures related to Comprehensive Plan amendments are contained in Chapter 18.08~~

## Chapter 18.16

### SITE PLAN REVIEW PROCESS

**Sections:**

- 18.16.010 Purpose**
- 18.16.020 Applicability**
- 18.16.030 Procedures**
- 18.16.040 Criteria for Approval**
- 18.16.050 Amendments to Approved Site Plans**

**18.16.010 Purpose.**

Site plan review is an evaluation of development plans to identify compliance with applicable regulations, requirements and standards and to ensure that development will protect the health, safety and general welfare of residents of the ~~City~~city.

**18.16.020 Applicability.**

Site plan review and approval is required prior to the location, occupancy or use of any commercial or industrial project, building or facility and, for any multi-family residential use or structure containing four or more dwelling units, ~~and for any proposal using the clustering provisions of Chapter 18.84.~~ Site plan review shall apply to all new development, expansion or site improvements that will change the physical conditions of a site and is required prior to issuance of building permit. Site plan review is not intended to review and determine the appropriateness of a given use on a particular site.

**18.16.030 Procedures.**

- A. Site plan review is processed as a Type ~~3-2~~ decision, ~~or Type 2 decision~~ for both new applications and a minor amendments to an approved site plan, pursuant to Chapter 18.08. Site plan review may be conducted independently or concurrently with any other development permit required by this title, ~~including but not limited to a preliminary plat, short plat or master planned development.~~
- B. Pre-application conference required. A pre-application conference between the site plan applicant or representative and City staff is mandatory. The purpose of this conference is for the applicant to familiarize the staff with the proposed site plan, and for the staff to review with the applicant the City's submittal requirements, processing procedures, development standards and city requirements applicable to site plans. The City may establish a fee for the pre-application conference.

C. Application Requirements. An application for site plan review shall include the following:

1. Vicinity map, showing site boundaries and existing roads and accesses within and bounding the site.
2. Site plans, drawn to a scale no less than one inch equals fifty feet, showing the location and size of uses, buffer and open space areas, landscaped areas, areas of disturbance outside building footprints, and any existing structures, easements and utilities,
3. Topographic map, based on a site survey delineating existing contours at no less than 5-foot intervals, and which locates existing streams, wetlands and other natural features.
4. Conceptual landscape plan
5. Parking and circulation plan
6. Preliminary stormwater management plan
7. Utilities plan
- ~~8. An open space plan if the clustering provisions of Chapter 18.84 are being used~~
9. Other reports or studies as determined applicable by the director, including but not limited to geotechnical, critical areas, and/or traffic;
- ~~10. SEPA environmental checklist unless the proposal is categorically exempt per BDMC 19.04, SEPA regulations~~
10. Narrative description of the proposal including: (i) site size, building size, and impervious surface coverage, and amount of area devoted to open space and recreation, landscaping and parking; calculations of gross and net density (ii) Comprehensive Plan and zoning designations; (iii) elevations and perspective drawings of proposed structures and other proposed improvements; (iv) any agreements, covenants or other provisions that affect the proposal; and (v) signatures, mailing addresses and phone numbers of all owners of record or agents of the subject property.

The Director may modify these requirements based on the size, scope and complexity of the proposal.

#### **18.16.040 Criteria for approval.**

To be approved, or approved with conditions, a site plan must be consistent with the City's Comprehensive Plan and must comply with all applicable development regulations, codes and other city requirements. ~~Site plans that incorporate clustered development must also meet the criteria of Chapter 18.84.~~

#### **18.16.050 Amendments to approved site plans.**

~~A. Minor alterations to an approved site plan are Type 2 administrative decisions that may be approved by the director, subject to the same procedures required for the initial site plan approval. "Minor alterations" are defined to mean and are limited to those which may affect the precise dimensions or siting of buildings—such as site coverage, height or setbacks—but which do not affect the basic character, arrangement or density of development, or the amount or quality of open space or~~

landscaping. Such dimensional adjustments shall not vary more than ten percent and shall not exceed the standards of the applicable zoning district.

- ~~B. Major amendments are Type 3 permit applications and are processed in accordance with Chapter 18.08. Major amendments are those which substantially change the character, basic design, density, open space or other conditions or requirements of the site plan. No building or other permit shall be issued unless and until the major amendment has been approved pursuant to applicable procedures.~~

## Chapter 18.30

### SINGLE-FAMILY RESIDENTIAL DISTRICTS – R4 & R6

#### *Sections:*

- 18.30.010 Intent.**  
**18.30.020 Permitted uses.**  
**18.30.030 Conditional uses.**  
**18.30.040 Development standards.**  
**18.30.050 Additional requirements**

#### **18.30.010 Intent.**

It is the intent of this chapter to:

- A. Enhance the residential quality of the city by providing a high standard of development for single-family residential areas.
- B. Designate certain areas in which single-family structures on individual lots are the predominant type of dwelling unit.
- C. Guide residential development to those areas where public sewers are in place or can be extended efficiently at reasonable cost.
- D. Guide development of residential areas in such manner as to assure availability of public services and community facilities such as utilities, police and fire protection, schools, parks and recreation.

#### **18.30.020 Permitted uses.**

- A. Residential.
  1. Single-family detached structures on individual lots
  2. Manufactured housing as provided in Chapter 18.90.
- B. Other or Related Uses.
  1. Accessory buildings or structures as provided in Chapter 18.50.
  2. Temporary uses as provided in Chapter 18.52.
  3. Home occupations as provided in Chapter 18.54.
  4. Accessory dwelling units as provided in Chapter 18.56.

*Comment: Helpful cross-reference.*

- 4.5. Utilities, under-ground.
- 5.6 Child day care for up to 12 children.

**18.30.030 Conditional uses.**

The following uses not allowed as permitted uses in Section 18.30.020 may be allowed by approval of a Conditional Use Permit in accordance with Chapters 18.08 and 18.12:

- A. Child care for more than 12 children, including nursery schools, day care centers and preschools.
- B. Utilities, above-ground
- C. Public uses/ facilities
- D. Religious institutions, not to exceed 10,000 sq. ft. gross floor area.
- E. Bed and breakfast.

*Comment: Since a B&B would typically occur within a single family home, it makes sense to include them as conditionally permitted uses. .*

EF. Duplexes, subject to the following criteria:

- 1. The minimum lot size for a duplex shall be 1.5 times that required for a single family detached structure. Only one duplex shall be permitted per lot which meets this standard;
- 2. A lot on which a duplex is proposed shall not be located within 300 feet of any other lot on which a duplex or multiple unit structure is found (accessory dwelling units excluded), or constitute more than ten percent (10%) of the dwelling units in a single block;
- 3. Duplexes shall be subject to design standards to ensure their compatibility in terms of bulk, scale and architectural style with the surrounding neighborhood.

FG. Private schools, K-12.

**18.30.040 Development standards.**

D. Signs. Regulation of signs is provided in Chapter 18.82.

**18.30.050 Additional requirements.**

A. All development within the R4 and R6 zones shall comply with applicable environmental performance standards of Chapter 18.8078 and, if applicable, the design review requirements of Chapter 18.7674.

**Chapter 18.32**

**MEDIUM DENSITY RESIDENTIAL DISTRICT – MDR8**

*Sections:*

- 18.32.010 Intent.
- 18.32.020 Permitted Uses.
- 18.32.030 Conditional Uses.
- 18.32.040 Development Standards

## 18.32.050 Additional Requirements

### 18.32.010 Intent.

It is the intent of this section to:

- A. Enhance the residential quality of the city by providing a high standard of development for multi-family residential areas;
- B. Designate appropriate areas in which medium density residential structures on individual lots are the predominant type of dwelling unit;
- ~~C. Guide medium density residential development to those areas where (i) public sewers are in place prior to building construction, or (ii) where sewers can be extended at minimal cost;~~

*Comment: This is more of a Comp Plan policy statement and, since a developer will bear the cost of sewer extension, costs are a moot point from a City perspective.*

- ~~D.~~ Guide the development of multi-family residential dwellings to such areas and in such manner as to assure availability of public services and community facilities such as utilities, police and fire protection, schools, parks and recreation, and convenient access to public transportation consistent with City level of service standards;
- ~~E.~~ Encourage the preservation of critical areas and other significant places identified in the City's Transfer of Development Rights Program (BDMC 19.24) by allowing increased densities when the TDR mechanism is used; and
- ~~F.~~ Apply appropriate guidelines to ensure that structures developed for medium density residential use are well designed.

### 18.32.020 Permitted uses.

- A. Residential:
  - 1. Single-family structures on individual lots, whether attached or detached.
  - 2. Multi-family residential structures, provided that no individual structure shall contain more than six dwelling units.
  - 3. Cottage Housing, as provided in Chapter 18.88.
  - 4. Manufactured Housing as provided in Chapter 18.90.
  - 5. Accessory dwelling unit, as provided in Chapter 18.56.

*Comment: Helpful cross-reference.*

- B. Other or Related Uses.
  - 1. Accessory buildings or structures as provided in Chapter 18.50.
  - 2. Temporary uses as provided in Chapter 18.52.
  - 3. Home occupations as provided in Chapter 18.54.
  - 4. Utilities, under-ground.
  - 5. Child day care for up to 12 children.

### 18.32.030 Conditional uses.

The following uses not allowed as permitted uses in Section 18.32.020 may be allowed by Conditional Use Permit in accordance with Chapters 18.08 and 18.12:

- A. Child care including nursery schools, day care centers and preschools for more than 12 children;
- B. Utilities, above-ground;

- C. Public uses/ facilities;
- D. Religious institutions, not to exceed 10,000 square feet gross floor area.
- E. Bed and breakfast;
- F. Senior housing;
- G. Elderly housing – assisted;
- H. Manufactured home parks;
- I. Group homes;
- J. Private schools, K-12.

**18.32.040 Development standards.**

- A. Site area and dimensional standards
  - 1. Maximum density: Eight (8) dwelling units per acre without Transfer of Development Rights; twelve (12) dwelling units per acre with Transfer of Development Rights.
  - 2. Minimum Lot Area:
    - a. Multi-family structures: seven thousand two hundred (7,200) square feet;
    - b. Single-family structures on individual lots: three thousand six hundred (3,600) square feet.
  - 3. Minimum Lot Width: Fifty (50) feet.
  - 4. Minimum Lot Depth: Seventy (70) feet.
  - 5. Minimum Front Yard:
    - a. On minor street: Twenty (20) feet.
    - b. On major street: Twenty-five (25) feet.
  - 6. Minimum Side Yards:
    - a. Minimum on interior lot lines: Seven (7) feet.
    - b. Minimum on a flanking street: Ten (10) feet.
  - 7. Minimum Rear Yard: Ten (10) feet.
  - 8. Maximum Building Coverage: Fifty percent (50%).
  - 9. Maximum Building Height:
    - a. Main building: Thirty-five (35) feet.
    - b. Accessory buildings: The height of the primary building(s) or twenty-six (26) feet, whichever is less.
  - 10. Structure separation: On lots containing more than one structure, there shall be a distance of not less than ten (10) feet, between all buildings, including accessory buildings.
  - ~~11. Bonus Density. The inclusion of senior or elderly assisted housing within a project may be granted a bonus density as follows:
 
    - a. The additional density may be one percent for each one percent of total project dwelling units dedicated to senior or elderly assisted housing;
    - b. The bonus shall be calculated on the total units dedicated, regardless of type; and
    - e. The maximum bonus density shall not exceed 20% for a project.~~

**Comment: The bonus density factor in this section doesn't make a lot of sense, as it is very low. The Commission is recommending to eliminate this provision at this time.**
- B. Parking. Off-street parking shall be provided in accordance with Chapter 18.80.
- C. Landscaping.

1. Landscaping shall be planned and provided in accordance with Chapter 18.72.
2. Development shall also comply with the tree preservation requirements of BDMC 19.30.

D. Signs. Regulation of signs is provided in Chapter 18.9282.

E. Lighting. Lighting shall comply with the requirements of Chapter 18.70.

F. Storage and exterior displays.

1. Required landscaping or buffer areas shall not be used for storage of any sort.
2. Storage or parking of motor vehicles for rental income is prohibited.

**18.32.050 Additional requirements.**

A. All development within the MDR8 zone shall comply with the applicable environmental performance standards of Chapter 18.8078, the site plan review requirements of Chapter 18.16, and design review requirements of Chapter 18.7674.

## Chapter 18.34

### SUPPLEMENTAL RESIDENTIAL STANDARDS

**Sections**

**18.34.010 Purpose.**

**18.34.020 Height.**

**18.34.030 Yards and open space.**

**18.34.040 Lots.**

**18.34.010 Purpose.**

The purpose of this chapter is to ensure adequate light, air and open space within residential areas, while protecting the rights of owners to attain a reasonable use of their property that would be denied by strict adherence to the development standards of the applicable zone district.

**18.34.020 Height.**

The maximum basic height limitation for all principal and accessory buildings in the various zone districts shall not apply to cupolas that do not extend more than three (3) feet above the roof line, flagpoles, transmission lines, residential antennas, and other similar structures as determined by the director.

**18.34.030 Yards and open space.**

Except as provided in this section, every required yard shall be open and unobstructed from the ground to the sky.

A. The following may project from a building into a required yard setback no more than two (2) feet:

1. Fireplace structures not wider than eight (8) feet measured in the general direction of the wall of which it is a part;

2. Bay windows and garden windows which do not require a foundation;
  3. Enclosed stair landings;
  4. Personal television satellite dishes;
  5. Cornices, sills, eave projections and awnings without enclosing walls or screening;
  6. Planting boxes or masonry planters not exceeding 30 inches in height.
- B. Porches and platforms.
1. Uncovered porches and platforms which do not extend above the floor level of the first floor may project two (2) feet into required side yards, and six (6) feet into required front yards and ten (10) feet into required rear yards;
- Comment: recommend allowing greater intrusions into these required yards, since these porches/decks won't be very high above the ground.*
2. Covered but enclosed porches and platforms which do not extend above the floor level of the first floor and which are no wider than fifty percent (50%) of the building's frontage may project five (5) feet into a required front yard.
- C. Special Front Yard Depth. If buildings existing on July 17, 1980 occupy more than fifty (50%) or more of the buildings on one side of a street are set back less than the required front yard of the applicable zone district, then in lieu thereof, the depth of the front yard shall not be less than the average depth of the front yards on that block front, provided that:
1. No building shall be required to set back more than two (2) feet further than a building on an adjoining lot;
  2. No front yard shall be less than twenty (20) feet to a garage, either attached or detached.
- D. Side yard width reductions. In the R4, R6 and MDR8 districts, where there exists a lot on which it is possible to construct a single family dwelling, and the lot has a width of less than forty (40) feet, then the required interior side yard setback may be reduced to three feet for all portions of the structure, including those noted in (A) above.

## Chapter 18.36

### NEIGHBORHOOD CENTER - NC

#### *Sections*

- |                  |                                |
|------------------|--------------------------------|
| <b>18.36.010</b> | <b>Intent.</b>                 |
| <b>18.36.020</b> | <b>Permitted uses.</b>         |
| <b>18.36.030</b> | <b>Conditional Uses</b>        |
| <b>18.36.040</b> | <b>Development Standards</b>   |
| <b>18.36.050</b> | <b>Additional Requirements</b> |

- 18.36.010 Intent.**

It is the intent of this section to:

- A. Enhance residents' access to goods and services needed daily in a setting that contributes to neighborhood character, encourages pedestrian activity, reduces automobile use, and serves as a focus of neighborhood life;
- B. Create a complementary mix of neighborhood-serving retail, personal service, general office, entertainment/cultural, public service, and residential uses for a range of lifestyles;
- C. Guide the development of multi-family residential dwellings to such areas and in such manner as to assure availability of public services and community facilities such as utilities, police and fire protection, schools, parks and recreation, and convenient access to public transportation consistent with City level of service standards;
- D. Allow mixed use developments that integrate residential uses into neighborhood centers, either within the same building or on the same development site, to enhance living convenience;
- E. Encourage orientation to the street and pedestrian amenities to create a pleasant pedestrian environment; and
- F. Ensure that the nature of development is harmonious with the surrounding single family neighborhood in intensity, scale, quality, and character.
- G. Allow more intensive uses to be maintained and expanded under certain conditions.

**18.36.020 Permitted uses.**

- A. Retail; the following uses only are allowed:
  - 1. Supermarket and grocery stores: limited to not more than 40,000 square feet gross floor area.
  - 2. All other typical neighborhood retail uses: limited to not more than 10,000 square feet gross area for each individual use, whether in a separate building or combined with other uses in one building, not to exceed 100,000 square feet gross floor area in total; and excluding drive-through facilities and automobile fueling stations.
- B. Personal services provided primarily to neighborhood residents: limited to not more than 4,000 square feet gross floor area per business.
- C. General offices: limited to not more than 4,000 square feet gross floor area per business and excluding drive-through facilities.
- D. Entertainment/culture: limited to not more than 5,000 square feet gross floor area or capacity of not more than 100 patrons per business, whichever is greater, and excluding drive-through facilities.
- E. Residential uses in attached structures if included as an element of mixed use site development or on upper floors of a mixed use structure.
- F. Utilities, below-ground
- G. Existing light manufacturing uses, provided no expansion is allowed.
- H. Veterinary clinics and pet stores; no boarding of dogs or outdoor kennels allowed.  
*Comment: Staff had a recent contact from a vet looking to locate in the city and realized the code did not address this issue.*
- I. Other or Related Uses:
  - 1. Accessory uses and structures as provided Chapter 18.50.
  - 2. Temporary uses as provided in Chapter 18.52.

**18.36.030 Conditional uses.**

The following uses may be allowed by Conditional Use Permit in accordance with Chapters 18.08 and 18.12:

- A. Bed and breakfast;
- B. Religious institutions;
- C. Drive through facilities, maximum one (1) per property;
- D. Essential public facilities;
- E. Utilities, above-ground;
- F. Public Uses / Facilities;
- G. Senior housing.
- H. Automobile fueling stations.
- I. Any expansion of the space, volume or facilities of any light manufacturing use that existed before June 27, 2009. Any such expansion must be contained within the same lot as the existing use.

**18.36.040 Development standards.**

- A. Dimensional Standards:
  - 1. Bulk limit: For structures without residential uses, floor area ratio (F.A.R.) shall not exceed 1.0 (total gross floor area shall not be greater than total site area); for mixed-use structures containing residential uses, F.A.R. shall not exceed 2.0 (total gross floor area shall not be greater than twice total site area).
  - 2. Maximum allowed height: thirty-five (35) feet, without residential on upper floors; fifty (50) feet, with residential on upper floors.
  - 3. Minimum Lot Area, Width and Depth: None.
  - 4. Maximum Front Yard Setback: At least 60% of the width of any street façade of a primary use shall be set back no more than ten (10) feet from the front property line, provided that the maximum allowed setback is (fifteen) 15 feet for structures with first floor residential uses.
  - 5. Minimum Side Yard Setback: Twenty (20) feet if abutting a residential zone plus one foot additional setback for each foot of building height over thirty-five (35) feet.
  - 6. Minimum Rear Yard Setback: If abutting a residential zone, fifteen (15) feet for a building without residential use and twenty (20) feet for a building with residential use plus one foot additional setback for each foot of building height over thirty-five feet.
  - 7. Maximum Impervious Surface Coverage: eighty percent (80%).
  - 8. Maximum residential density:
    - (a) Without bonuses: twelve (12) dwelling units per acre in an exclusively residential building; in a mixed use building, none (only as limited by F.A.R., height, parking and other site development standards).
    - (b) ~~Inclusion of senior housing within a project may be granted a bonus density as follows:~~
    - (c) ~~A one percent (1%) density bonus for each percent of total project dwelling units dedicated to senior housing;~~
    - (d) ~~The bonus shall be calculated on the total units dedicated, regardless of type;~~  
and

(e) ~~The maximum bonus density shall not exceed twenty percent (20%) for a project.~~

*Comment: Same issue as before.*

- 9. Maximum Site Area: 10 acres
- B. Parking. Off-street parking shall be provided in accordance with Chapter 18.80.
- C. Landscaping.
  - 1. Landscaping shall be planned and provided in accordance with Chapter 18.72.
  - 2. Development shall also comply with the tree preservation requirements of BDMC 19.30.
- D. Signs. Regulation of signs is provided in Chapter 18.9882.
- E. Lighting. Lighting shall comply with the requirements of Chapter 18.70.
- F. Storage and exterior displays.
  - 1. Required landscaping or buffer areas will not be used for storage of any sort.
  - 2. There shall be no exterior storage of any items whether or not for sale, other than sidewalk displays of retail items during operating hours only or as otherwise permitted as a temporary use.

**18.36.050 Additional requirements.**

- A. All development within the NC zone shall comply with applicable environmental performance standards of Chapter 18.8078, and the site plan review requirements of Chapter 18.16 and the design review requirements of Chapter 18.6474.

## Chapter 18.38

### COMMUNITY COMMERCIAL DISTRICT – CC

*Sections:*

- 18.38.010 Intent.**
- 18.38.020 Permitted uses.**
- 18.38.030 Conditional uses.**
- 18.38.040 Development standards.**
- 18.38.050 Additional Requirements**

**18.38.010 Intent.**

It is the intent of this section to:

- A. Encourage the development of retail facilities which offer a relatively wide range of goods to consumers within the community and the broader regional marketplace;
- B. Encourage the clustering of such facilities on sites of sufficient size to provide opportunity for attractive design and arrangement of buildings, safe and convenient access and parking;
- C. Limit location of such sites to major arterials or intersections of major traffic ways in order that said sites may serve the entire community and broader region;

- D. Encourage mixed-use developments that integrate residential uses into commercial projects, either within the same building or on the same development site, to enhance living convenience.

**18.38.020 Permitted uses.**

- A. Retail, including automobile fueling stations and uses involving outdoor product display or storage;
- B. Personal and professional services
- C. Entertainment / Cultural
- D. Religious institutions
- E. Drive through facilities, including automobile fueling stations.
- F. Hotel, motel, and other visitor lodging
- G. Residential, if developed as an element of mixed use site development, either in separate buildings or on the upper floors of a mixed use building; provided that, residential is not allowed at street level within buildings fronting an arterial street.
- H. Veterinary clinics and pet daycare.

*Comment: allow vet clinics with no limitations, also doggie daycare.*

H. Public Uses / Facilities

- I. Utilities, below-ground; and

J. Other or Related Uses:

1. Accessory uses and structures as provided Chapter 18.50.
2. Temporary uses as provided in Chapter 18.52.

**18.38.030 Conditional uses.**

The following uses not allowed as permitted uses in Section 18.38.020 may be allowed by Conditional Use Permit in accordance with Chapters 18.08 and 18.12:

- A. Major institutions;
- B. Essential public facilities;
- C. Utilities, above-ground;
- D. ~~Wholesale or retail establishments, or h~~Hybrid wholesale/retail establishments, larger than 50,000 square feet; and

*Comment: Recommend cleaning this up to require some retail sales and to not allow an exclusive wholesale establishment (those are typically only allowed in industrial zones).*

- E. Mini storage facilities.

**18.38.040 Development standards.**

C. Landscaping.

1. Landscaping shall be planned and provided in accordance with Chapter 18.8672.
2. Development shall also comply with the tree preservation requirements of BDMC 19.30.

**18.38.050 Additional Requirements**

- A. All development within the CC zone shall comply with applicable environmental performance standards of Chapter 18.78, the site plan review requirements of Chapter 18.16, and design review requirements of Chapter 18.7674.

**Chapter 18.40**

**TOWN CENTER - TC**

*Sections*

- 18.40.010 Intent.**
- 18.40.020 Permitted uses.**
- 18.40.030 Conditional Uses**
- 18.40.040 Development Standards**
- 18.40.050 Additional Requirements**

**18.40.010 Intent.**

It is the intent of this section to:

- A. Encourage a range of retail, service, civic, entertainment, recreation, and residential uses to maintain a town center as the primary district of community activity and social interaction;
- B. Provide opportunities for an integration of living, working, shopping, entertainment, civic and recreation activities to serve a variety of lifestyles;
- C. Insure that new development occurs in a manner that is complementary to surrounding uses and neighborhoods;
- D. Encourage street-oriented store frontages and sidewalk amenities to enhance the pedestrian atmosphere;
- E. Reduce the amount of vehicular travel required of the consumer to access goods and services needed in daily living;
- F. Encourage mixed-use developments that integrate residential uses into commercial projects, either within the same building or on the same development site, to enhance living convenience; and
- G. Create a place that serves as the social and activity heart of the community and is recognized as the central venue of community life.

**18.40.020 Permitted uses.**

- A. Retail
- B. Personal and Professional Services
- C. General Office
- D. Entertainment / Culture
- E. Public Uses / Facilities, limited to general governmental administrative offices.
- F. Residential, if in an attached building and developed as an element of mixed use site development or on the upper floors of a mixed use building; residential is not allowed at street level if fronting an arterial street.

G. Utilities, below-ground

**18.40.030 Conditional uses.**

The following uses not allowed as permitted uses in Section 18.40.020 may be allowed by Conditional Use Permit in accordance with Chapters 18.08 and 18.12:

- A. Child care including nursery schools and day care centers;
- B. Utilities, above-ground;
- C. Major Institution;
- D. Private clubs, fraternal lodges and similar organizations;
- E. Religious institutions;
- F. Public Uses / Facilities not otherwise permitted in 18.40.020;
- G. Parking structures not associated with a primary, permitted use;
- H. Senior housing.

**18.40.040 Development standards.**

- A. Development within the Town Center District.
  - 1. All new construction and reconstruction of existing buildings shall be designed and built so that the exterior appearance of the finished building complements and enhances the historic character of the district
  - 2. At the time of site plan review, the applicant shall submit a color architectural rendering showing the elevations of the proposed construction including the types of materials to be used.
  - 3. The director shall solicit and ~~the Hearing Examiner shall~~ consider the comments of the Black Diamond Historical Society, and any other agency or entity with expertise, in reaching a decision on the proposed building and site plan.

*Comment: recommend that Site Plan Review be an exclusively administrative process.*

- B. Dimensional Standards:
  - 1. Floor Area Ratio (F.A.R.) limit: For structures without residential uses, F.A.R. shall not exceed 1.0 (total gross floor area shall not be greater than total site area); for mixed-use structures with residential uses, F.A.R. shall not exceed 2.0 (total gross floor area shall not be greater than twice the total site area).
  - 2. Maximum allowed height: thirty-five (35) feet, without residential; fifty (50) feet, with residential.
  - 3. Minimum Lot Area, Width and Depth: None.
  - 4. Maximum Front Yard Setback: One hundred percent (100%) of the width of any street façade of a primary use shall set back no more than five (5) feet from the front property line, unless a public plaza or similar amenity is provided between the façade and the street. The maximum allowed setback is ten (10) feet for structures.
  - 5. Minimum Side Yard Setback: Ten (10) feet if abutting a residential zone plus one foot additional setback for each foot of building height over thirty-five (35) feet.
  - 6. Minimum Rear Yard Setback: If abutting a residential zone, ten (10) feet for a building without residential use and fifteen (15) feet for a building with residential

- use, plus one foot additional setback for each foot of building height over thirty-five (35) feet .
7. Maximum impervious surface coverage: one hundred percent (100%).
  8. Maximum residential density: None; only as limited by F.A.R., height, parking and other site requirements. Inclusion of senior housing within a project may be granted a bonus density as follows:
    - (a) Density may be increased by one percent for each one percent of total project dwelling units that are dedicated to senior housing;
    - (b) The bonus shall be calculated on the total units dedicated, regardless of type; and
    - (c) The maximum bonus density shall not exceed twenty percent (20%) for a project.
    - (d). Parking. Off-street parking is not required for any use in the Town Center zone.
    - (e) Landscaping.
- C. Landscaping.
1. Landscaping shall be planned and provided in accordance with Chapter 18.8672.
  2. Development shall also comply with the tree preservation requirements of BDMC 19.30.
- D. Signs. Regulation of signs is provided in Chapter 18.82.
- E. Lighting. Lighting shall comply with the requirements of Chapter 18.70.
- F. Storage and exterior displays.
1. Landscaping or buffer areas will not be used for storage of any sort.
  2. There shall be no exterior storage of any items whether or not for sale, other than sidewalk displays of retail items during operating hours only.

**18.40.050 Additional requirements.**

- A. All development within the TC zone shall comply with applicable environmental performance standards of Chapter 18.8078, -the site plan review requirements of Chapter 18.16, and design review requirements of Chapter 18.7674.

## Chapter 18.42

### BUSINESS/INDUSTRIAL PARK – B/IP

*Sections:*

- 18.42.010 Intent.**  
**18.42.020 Permitted Uses.**  
**18.42.030 Conditional Uses.**  
**18.42.040 Development Standards.**  
**18.42.050 Additional Requirements**

**18.42.010 Intent.**

It is the intent of this section to:

- A. Provide areas for the development and growth of non-retail businesses engaged in high technology and software development, research and development, general office, wholesale, distribution and limited manufacturing activities to expand the community's economic and employment base;
- B. Promote concentrated, master-planned developments with cohesive design elements for architecture, landscaping, and circulation; development with high-visual quality and park-like site characteristics; functional and aesthetic compatibility with adjacent uses and neighborhoods; and enhanced opportunities for walking, biking and transit; and
- C. Insure a mix of complementary support uses, including technical consulting, personnel and productivity support services, and limited retail and service uses to support the principal business/industrial uses and reduce off-site vehicle trips to access business support services.

**18.42.020 Permitted uses.**

- A. Office, research and technology and light manufacturing activities that do not create significant noise, emissions, risk of explosion or release of hazardous materials, or air or water pollution ;
- B. General Office, including call centers and other customer service communication centers;
- C. Research and Development;
- D. Technology, biotechnology and medical equipment;
- E. Light Manufacturing, providing all production and storage activity is conducted indoors;
- F. Wholesaling;
- G. Business Support Services, such as technology services and support, copy centers, and eating and drinking establishments to serve the occupants of the business park. The total gross floor area of such uses is not to exceed twenty percent (20%) of the total project gross floor area and a 5,000 gross square feet maximum for any individual use;
- H. Child care, including nursery schools and day care centers, when -integrated within a ~~master-planned-development~~;

*Comment: An MPD is a distinct zone district, so this reference is not needed here.*

- I. Utilities, below-ground;
- J. Private schools; and
- K. Other Uses.

**18.42.050 Other requirements.**

- A. All development within the B/IP zone shall comply with applicable environmental performance standards of Chapter 18.78, the site plan review requirements of Chapter 18.16, and the design review requirements of Chapter 18.7674.

## Chapter 18.44

### INDUSTRIAL DISTRICT – I

#### *Sections*

- 18.44.010 Purpose.
- 18.44.020 Permitted Uses.
- 18.44.030 Conditional Uses
- 18.44.040 Development Standards
- 18.44.050 Additional Requirements

#### 18.44.010 Purpose.

The intents of this section are to:

- A. Provide areas for the development and growth of general manufacturing and other industrial activities to contribute to the community's economic health, provide employment opportunities for residents, and generate tax revenues to support the provision of public services;
- B. Keep industrial activities within reasonable scale and consistent with the character of the city;
- C. Protect industrial areas from such other uses as may interfere with the purpose and efficient functioning of such areas;
- D. Protect residential and other non-industrial areas from adverse or damaging impact of any kind emanating or resulting from industrial areas; and
- E. Provide standards for development of industrial areas.

#### 18.44.020 Permitted Uses

- A. Heavy manufacturing industry.

*Comment: "industry" is the term used in the definitions section.*

- B. Light Manufacturing,
- C. Research and Development
- D. General office associated with a primary manufacturing use.
- E. Wholesaling;
- F. Warehousing and Distribution;
- G. Business Support Services including eating establishments primarily serving the immediate work force; the total gross floor area of such uses shall not exceed twenty percent (20%) of the total district area and a 5,000 gross square feet maximum area for any individual use;
- H. Utilities;
- I. Public Uses / Facilities;
- J. Private schools; and
- K. Other Uses:
  - 1. Accessory uses as provided in Chapter 18.50.
  - 2. Temporary uses as provided in Chapter 18.52.

**18.44.050 Other requirements.**

- A. All development shall comply with applicable environmental performance standards of Chapter 18.78, the site plan review requirements of Chapter 18.16 and design review requirements of Chapter 18.7674.

**Chapter 18.46**

**PUBLIC – PUB**

*Sections*

- 18.46.010 Intent.**
- 18.46.020 Permitted uses.**
- 18.46.030 Conditional Uses**
- 18.46.040 Development Standards**
- 18.46.050 Additional Requirements**

**18.46.040 Development standards.**

- A. Dimensional Standards. None.
- B. Parking. Off-street parking shall be provided in accordance with Chapter 18.80.
- C. Landscaping.
  - 1. Landscaping shall be planned and provided in accordance with Chapter 18.8672.
  - 2. Development shall also comply with the tree preservation requirements of BDMC 19.30.

**18.46.050 Additional requirements.**

- A. All development within the PUB zone shall comply with applicable environmental performance standards of Chapter 18.78, the site plan review requirements of Chapter 18.16, and design review requirements of Chapter 18.7674.

**Chapter 18.50**

**ACCESSORY USES AND STRUCTURES**

*Sections:*

- 18.50.010 Intent.**
- 18.50.020 General provisions.**
- 18.50.030 Residential zones accessory uses and structures.**
- 18.50.040 Commercial zones accessory uses and structures.**
- 18.50.050 Industrial zones accessory uses and structures.**
- 18.50.060 Fences and walls.**

**18.50.010 Intent.**

This chapter recognizes activities and structures that are customarily subordinate and incidental to a principal use of the land or building and that are not otherwise regulated by this Title.

**18.50.020 General provisions.**

- A. Accessory structures shall be complementary to the basic architectural character of the main building on the lot, and appropriate to the nature of the accessory use, and are subject to the applicable design guidelines of Chapter ~~18.76~~18.74.
- B. Required setbacks:
  - 1. Accessory structures shall observe the front, side and rear yard setback requirements of the zone in which they are located, except as provided in this chapter.
- C. Maximum accessory structure height:
  - 1. Residential zones: twenty-six (26) feet or the height of the principal structure, whichever is less.
  - 2. Neighborhood Commercial, Community Business and Town Center zones: twenty-six (26) feet.
  - 3. Business/Industrial Park & Industrial zones: thirty-five (35) feet or the height of the principal use structure, whichever is less.

**18.50.030 Residential zone accessory uses and structures.**

- A. The following accessory uses/activities are allowed in residential zones:
  - 1. The cultivation of flowers, trees or produce intended primarily for personal use or enjoyment.
  - 2. The keeping of animals is permitted in compliance with the Title 6 BDMC.
  - 3. Accessory dwelling units in accordance with Chapter 18.56.
  - 4. Detached garage(s), carport(s), and parking facilities for the residents of the property.
  - 5. Storage sheds ~~not greater than two hundred (200) square feet in gross floor area.~~  
*Comment: no need for a size limitation in the Zoning Code.*
  - 6. Playhouses, patios, cabanas, porches, gazebos, swimming pools, workshops, garden sheds and incidental household storage buildings.
  - 7. Common recreational vehicle storage facilities limited to serving the development in which they are located.
  - 8. Temporary storage containers used during an active construction project.
- B. Detached accessory buildings.
  - 1. For any lot 9600 sq. ft. or less, a detached accessory building not exceeding 26 feet in height may disregard rear and interior side yard setback requirements if such building is no greater than 650 sq. ft. in floor area, is located in the rear thirty percent (30%) of the lot or further than 75 feet from the front lot line, and is no closer than 12 feet from the centerline of an adjacent alley.
  - 2. The total area of all accessory buildings located within a required rear yard shall not exceed twenty-five percent (25%) of the area of the required rear yard.
  - 3. Accessory buildings that exceed the building area, height and location standards noted above shall comply with all required yard setbacks.

4. No accessory building shall be larger than fifty percent (50%) of the ground floor area of the primary structure on any lot; provided that this limitation shall not apply to accessory dwelling units or for agricultural buildings on lots greater than 35,000 sq. ft. in size.

*Comment: This amendment will allow larger accessory buildings than currently allowed.*

**18.50.050 Industrial zone accessory uses and structures.**

The following accessory uses are allowed in the B/IP and I zones:

- A. ~~Caretaker / security guard residence~~ Accessory living quarters.

*Comment: This is the proper term, as it is included in the Definitions chapter.*

- B. Storage buildings.

## Chapter 18.56

### ACCESSORY DWELLING UNITS

*Sections:*

**18.56.010 Definitions.**

**18.56.020 Where Authorized.**

**18.56.030 Performance Standards for Accessory Dwelling Units.**

**18.56.040 Review Process.**

**18.56.050 Recognition of Existing Accessory Dwelling Units**

**18.56.010 Definitions.**

- A. "Accessory dwelling unit" - a second dwelling unit either attached to or located on a lot occupied by a single-family detached dwelling. This unit provides a separate and completely independent dwelling unit with facilities for cooking, sanitation and sleeping, and has a separate and independent entry/exit than one utilized for the primary residence.
- B. "Owner occupancy" means a property owner, as reflected in the real estate tax rolls, who makes his or her legal residence at the subject lot, as evidenced by voter registration, vehicle registration, or similar means, and actually resides upon the lot more than six months out of any given year.

**18.56.020 Where authorized.**

Accessory dwelling units shall be permitted within any residential district subject to review and compliance with the standards and requirements of this chapter.

**18.56.030 Performance standards for accessory dwelling units.**

- A. Minimum Lot Size. All performance standards, including minimum yard setbacks and overall building coverage as set forth for the applicable zoning district shall be met with respect to the accessory dwelling unit. An accessory dwelling unit shall not be permitted upon any lot that is nonconforming due to lot size.
- B. Number. No more than one accessory dwelling unit shall be permitted on a lot.

- C. Location in Relation to Principal Residence. The accessory dwelling unit may be either detached or a part of the principal residence or an accessory building.
- D. Zoning/Building Code Compliance. All new construction associated with an accessory dwelling unit shall meet the development standards for the applicable zone, except as modified by this chapter, and shall comply with all applicable city codes, including requirements for an efficiency dwelling unit as set forth in the International Building Code adopted by the city.
- E. Owner Occupancy. An owner of the property for which an accessory dwelling unit permit is requested must occupy at least one dwelling unit located on the property.
- F. Future Subdivision. Parcels upon which an accessory dwelling unit has been approved shall not be subdivided or otherwise segregated in ownership in a manner that would separate the accessory dwelling unit from the principal dwelling.
  
- G. Maximum Size. An accessory dwelling unit shall not exceed fifty percent (50%) of the size of the primary dwelling on the lot or 800 sq. ft., whichever is less. Accessory dwelling units shall comply with the required site coverage, yard area requirements or building code setbacks as provided within the subject property's zone.
- H. Scale. A detached accessory dwelling unit or accessory structure containing an accessory dwelling unit shall not exceed the maximum height allowed for a detached accessory building per the underlying zoning district.
- I. Additions. Additions to an existing structure or newly constructed detached structures created for the purpose of creating an accessory dwelling unit, shall be designed in a manner consistent with existing roof pitch, siding and windows for the principal dwelling unit.
- ~~J. Detached Structures. An accessory dwelling unit may be permitted in a detached structure, subject to compliance with the requirements of this chapter.~~
- Comment: Detached ADUs already allowed by definition.*
- ~~K. Parking. At least one off-street parking space in addition to the minimum required off-street parking from the primary dwelling unit shall be provided for an accessory dwelling unit of nine hundred square feet of living area or less. All accessory dwelling units greater than nine hundred square feet of living space shall provide the minimum off-street spaces required for a single family residence.~~
- Comment: leftover from old code; this current version will not allow 900+ sq. ft. ADUs.*
- L. Utility Connections. Utility accounts for accessory dwelling units shall be maintained in the name of the property owner. Accessory dwelling units may be served by the same water meter and sewer connection utilized for the primary residence if approved by the city, but shall be assessed a monthly service fee as established by the city's fee schedule or applicable ordinance. The city may require an applicant to provide documentation demonstrating capacity availability prior to allowing a joint connection. The city may require upgrades to a utility connection and the cost of such upgrades shall be borne by the applicant. ~~Accessory dwelling units having nine hundred square feet or greater of living area shall pay for the cost of a separate single-family water and sewer service connection in accordance with the city's adopted fee schedule regardless of whether separate physical connections are required. If water or sewer service is not provided by the city, then the rules of the water or sewer district~~

shall apply as to whether an additional hook-up and connection fees are required. Any water or sewer service as referenced in this section is subject to water or sewer availability.

*Comment: leftover from old code; this version will not allow 900+ sq. ft. ADUs.*

~~M. Number Permitted. A maximum of one accessory dwelling unit shall be permitted on a lot otherwise meeting the requirements of this chapter.~~

*Comment: already addressed in (B) above.*

N. Design and Appearance. The accessory dwelling unit shall be designed so that, to the degree reasonably feasible, the appearance of the building is consistent with that of the primary residence. At a minimum, the new exterior construction associated with creating an accessory dwelling unit should match the existing exterior materials and design of the principal residence, and the pitch of any new roof should match that of the principal residence. New landscaping shall conform with or improve existing landscaping.

O. Entrance Location. An attached accessory dwelling unit shall have a separate entrance to the outside from the entrance for the primary dwelling. For attached accessory dwelling units, the entrance to the accessory dwelling unit shall be located in such a manner as not to appear as a second primary entrance to the structure which contains the principal residence in an effort to maintain the appearance of a single-family residence.

## Chapter 18.78

### ENVIRONMENTAL PERFORMANCE STANDARDS

#### *Sections:*

<b>18.78.010</b>	<b>Intent</b>
<b>18.78.020</b>	<b>Environmental Performance Standards-Generally</b>
<b>18.78.030</b>	<b>Noise</b>
<b>18.78.040</b>	<b>Emissions</b>
<b>18.78.050</b>	<b>Storage and Appearance</b>
<b>18.78.060</b>	<b>Other Ordinances Applicable</b>
<b>18.78.070</b>	<b>Enforcement</b>

#### **18.78.010 Intent.**

It is the intent of this section to:

- Protect public health and general welfare;
- Establish minimum standards for the control of environmental pollution;
- Minimize the adverse effects of contaminants which may result from the use of land by any activity or person.

#### **18.78.020 Environmental Performance Standards-Generally.**

It shall be the responsibility of the operator and/or the proprietor of any permitted use to provide such reasonable evidence and technical data as the director may require to

demonstrate that the use or activity is, or will be, in compliance with the performance standards of this chapter.

**18.78.030 — Noise.**

- A. ~~The maximum allowable noise levels as measured at the property line of noise impacted uses or activities shall be those set forth in WAC Chapter 173-60, entitled “Maximum Environmental Noise Levels,” which chapter is incorporated by reference.~~
- B. ~~The “Environmental Designation for Noise Abatement” (EDNA) for the several land use classifications of this title shall be as follows:~~
  - 1. ~~All living areas (single family, multifamily, etc.): A;~~
  - 2. ~~All commercial areas: B;~~
  - 3. ~~Industrial: C.~~

*Comment: allowable noise standards are established in BDMC 8.12 and in State law.*

**18.78.040 Emissions.**

- A. Air pollution, including the emission of odors, shall be controlled by the operator and/or proprietor of any land use or activity; and the ambient air quality standards of the Puget Sound Clean Air Agency shall apply to all air contaminants listed therein.
- B. Toxic substances shall be kept to concentrations not exceeding one-fiftieth of interior standards by use of the best available control methods and technology in all phases of plant operation and handling of materials, and by an active commitment to good housekeeping practices.
  - 1. Toxic substances not listed in Regulation I of PSCAA, but released into the air shall be limited in accordance with the most current publication entitled “Threshold Limit Values”, of the American Conference of Governmental Hygienists.
- C. Liquid wastes shall be disposed of through local sanitary sewer systems only upon approval of affected sewer district authorities.
- D. Liquid or solid wastes unacceptable to public sewer authorities shall be disposed of on a regular basis in keeping with the best operating characteristics of the industry, and in compliance with the regulations and requirements of local, regional, state or federal agencies having jurisdiction in waste disposal and environmental health and safety.
- E. Heat and Glare. Any operation producing intense heat or glare shall be performed within an enclosure so as to completely obscure such operation from view from any point along the property line.
- F. Radioactive Materials and Radiation Devices. The use, storage, transportation and disposal of all radioactive materials and radiation machines shall be subject to the regulatory jurisdiction and control of the Radiation Control Agency of the Washington State Department of Social and Health Services as amended.
- G. Vibration and Concussion. No use shall cause earth vibrations or concussions detectable without the aid of instruments beyond its lot lines, with the exception of the temporary vibration produced as a result of construction activity. Such temporary construction activity shall be restricted to the hours between seven a. m. and six p.m.

**18.78.050 Storage and appearance.**

In the conduct of any business, the storage of merchandise, raw materials, equipment, fixtures, scraps or solid wastes shall comply with the following requirements:

- A. Every reasonable effort shall be made by persons operating a business to store all such materials within an enclosed building, with the following exceptions:
  - 1. Where such inside storage is not practical or desirable for reasons related to health, fire or safety codes.
  - 2. Where the outside storage of merchandise, manufactured products, or raw materials is normal and standard practice, such as in the sale of automotive equipment, mobile homes, lumber, gardening materials, nursery stock and the like, or on the site of construction projects.
  - 3. When materials or products are temporarily stored outside incidental to shipping, delivery, loading or unloading thereof.
- B. Outside storage shall be maintained in an orderly manner and shall create no:
  - 1. Visual offense to the premises, adjacent properties or the public right-of-way;
  - 2. Fire, safety, health or sanitary hazard.
- C. Storage in residential areas shall comply with the same requirements as those specified for business establishments and shall, in addition, comply with the following:
  - 1. Motor vehicles, appliances, and any other mechanical equipment which is no longer operable shall not be stored outside for a period exceeding thirty days.
  - 2. Operable motor vehicles, boats, trailers, recreational vehicles and the like may be stored on the premises provided that they do not obstruct the use of public right-of-way or interfere with traffic visibility, especially the visibility of and at intersections of streets. Vehicles so stored shall not be used as living quarters.
- D. Storage in or on the public right-of-way is prohibited.

~~18.78.060 — Other ordinances.~~

- ~~A. All uses in every zoning district shall be in compliance with the city's Shoreline Master Program.~~
- ~~B. Wherever applicable, all construction, site preparation, drainage and erosion controls and the like, shall comply with the requirements of the International Building Code and International Residential Code or as those codes may be amended.~~

~~Comment: this section is redundant and unnecessary.~~

**18.78.070 Enforcement.**

- A. The director is authorized and required to enforce the minimum standards of this chapter.
- B. In the enforcement of this chapter, the director may require the operator or owner of an existing or proposed activity or use to submit reasonable evidence and technical data to demonstrate that the use or activity is or will be in compliance with the performance standards of this chapter.
- C. The director may undertake independent studies and engage such technical assistance as may be needed for such studies or to evaluate data or information submitted by an applicant in connection with the performance standards of any activity.

- D. The applicant, owner, operator or developer shall pay for or reimburse the city for the costs incurred in the conduct of such tests as the city may require and for costs incurred by the city to engage technical consultants for review and interpretation of data and findings submitted by or on behalf of the developer.

**18.80.030 Minimum requirements.**

- A. The requirements for off-street parking and loading facilities and their design shall be regarded as the minimum; however, the owner, developer, or operator of the premises for which the parking facilities are intended shall be responsible for providing adequate amount and arrangement of space for the particular premises even though such space or its arrangement is in excess of the minimum set forth in this Title.
- B. For Conditional Uses permitted under this Title that are not within a category in the Table at 18.80.030 E., the parking requirement shall be as provided by the applicable decision maker in the conditions of approval.
- C. There shall be no parking or loading allowed in any required side or rear yard that abuts a residential zone.
- D. The parking requirement tables (E., F., and G. below) group uses in the zone in which they are most commonly found, but these uses may also be permitted in other zones and are subject to the same parking standards.
- E. Parking requirements in Residential zones, unless otherwise modified by other provisions within this Code.

USES	REQUIRED SPACES (*Gross sq ft of primary building area)
Single-family dwellings	2
Multi-family structures (3 or more dwellings)	1.75 per unit
Multi-family studio/efficiency dwellings	1 per unit
Senior housing	¾ per unit
Manufactured home on individual lot	2
Manufactured or mobile home in a manufactured home park	2 per home, of which one may be located in on-site, shared parking areas
Religious Institutions, less than 10,000 gsf*	0.5 per seat or 4 lineal feet of pew space or 1 per 4 seats

- F. Parking requirements in Commercial zones.

USES	REQUIRED SPACES (*Gross sq ft of primary building area)
Retail, 10,000 gsf* and less	1 per 350 gsf*
Retail, over 10,000 gsf*	1 per 300 gsf*
Entertainment / Culture	

Restaurant	1 per 150 gsf*
Theaters and places of public assembly	1 per 4 seats
<del>Other</del> Entertainment / Culture	1 per 4 seats
General Office	1 per 500 gsf*
Personal and Professional Service	1 per 400 gsf*
Public Uses / Facilities	Depends on use and determined at site plan review
Major Institution	Depends on use and conditions of approval
Multi-family residential structures in a mixed-use project	1.5 per unit in a free-standing building; 1 per unit if within a mixed-use building
Day Care Center serving more than 12 children	Minimum of 6, plus one for each employee
Religious Institutions, 10,000 gsf* or larger	0.7 per seat or 4 lineal feet of pew space or 1 per 4 seats

*Comment: only one reference to entertainment/culture is needed.*

## Chapter 18.86

### RESIDENTIAL CLUSTER DEVELOPMENT (RCD)

#### *Sections:*

- 18.86.010 Intent**
- 18.86.020 Applicability**
- 18.86.030 Procedures**
- 18.86.040 Development Standards**

#### **18.86.010 Intent**

The intent of the residential cluster development (RCD) provisions is to accommodate the overall density of the underlying zoning district while allowing residential development to utilize less land area. The RCD standards are intended to allow for innovative design, and promote the City’s vision of a “Rural by Design” development pattern.

#### **18.86.020 Applicability**

- A. All residential zoning districts are eligible to apply for approval of residential cluster development.
- B. Cluster development may be applied to both multi-family and attached/detached single-family residential developments of three (3) or more dwelling units.

#### **18.86.030 Procedures and Criteria**

- A. Review Procedures. RCD applications are processed as a Type 3 Hearing Examiner decision (~~site plan approval~~) [Note: this change will also require a change to 18.08] pursuant to the provisions set forth in Chapter 18.08. Proposals for clustering shall be subject to and consolidated with the provisions and ~~procedures for site plan review, Chapter 18.16 and for preliminary plat approval, if individual lot ownership is proposed.~~

*Comment: With Site Plan Review becoming an administrative decision process, RCD will be separately addressed as a Type 3 decision. .*

B. Criteria for Approval. The Hearing Examiner may approve a RCD only if it is found that:

1. The location, design, and uses are consistent with the goals and policies of the Comprehensive Plan, the City's development codes and other City plans and ordinances;
2. The residential development integrates with its surroundings and is designed to harmonize with existing or proposed development in the neighborhood, including the project's response to ~~F of this section~~ 18.86.040.F;
3. The traffic generated by the development can be accommodated safely and within adopted level of service for affected streets;
4. All development will be served by existing or planned facilities and services;
5. The development makes provision for the preservation of the natural environment and/or identified open space or trails per the Comprehensive Plan.

C. Scope of Approval.

1. ~~Approval of an RCD occurs as an element of site plan review and is not a separate permit. Through a RCD, modifications to the setbacks, height, lot area, building coverage and development coverage standards of the underlying zone district may be granted.~~

*Comment: same reason as noted above.*

2. Approval of an RCD shall constitute a deviation of standards on the design of the site for only those designs and standards that are specifically included. Such revision of standards shall remain in effect until the residential development is constructed, or until its approval expires, at which time the underlying zoning standards automatically return to effect.

## CHAPTER 18.100

### DEFINITIONS

#### **18.100.010 Generally.**

In addition to the words and terms defined in this chapter, several sections of this title contain definitions specifically related to those sections. In the event of conflict between definitions in this list and those shown in other sections of this title the definition in the other section shall govern within the context of the section within which it appears. (See sections on Home Occupations, Accessory Dwelling Units, Special Uses, Signs and Mobile Homes-Manufactured Housing.)

*Comment: additional areas that include specific definitions are added to this list, while other terms that are not found in the code are proposed for deletion.*

#### 18.100.030 Accessory building.

A building, or structure, or portion of a building, devoted to an activity subordinate to the principal use of the premises ~~detached accessory buildings in residentially zoned districts~~

not exceeding one story of fifteen feet in height and not occupying greater than fifty percent of the area of a rear or side yard and not closer than ten feet to each other or the principal building are permitted

*Comment: This is a code writing faux pas 101; never put a standard in a definition. Plus, it is inconsistent with what the R zones otherwise allow.*

# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
<b>SUBJECT: Public Hearing - Ordinance No. 10-XXX, amending Chapter 19.04 of the Black Diamond Municipal Code, Environmental Policy, regarding various SEPA procedures</b>	<b>Agenda Date:</b> September 16, 2010		AB10-074
	Department/Committee/Individual	Created	Reviewed
	Mayor Rebecca Olness		
	City Administrator –		
	City Attorney – Kenyon Disend		X
	City Clerk – Brenda L. Martinez		
	Finance – May Miller		
	Public Works – Seth Boettcher		
	Economic Devel. – Andy Williamson		
	Police – Jamey Kiblinger		
Timeline: Ordinance becomes effective 5 days after publication	Parks/Nat. Resources – Aaron Nix		
	Community Develop. – Steve Pilcher	X	
<b>Attachments: Ordinance No. 10-XXX (clean &amp; annotated versions)</b>			
<p><b>SUMMARY STATEMENT:</b> As part of a series of amendments to the City’s various land use and development regulations, the Planning Commission reviewed minor changes to BDMC 19.04 regarding the SEPA process. The changes are recommended to be considered concurrently with proposed revisions to Chapter 18.08 of the Zoning Code, as the overall intent is to delete all references to the SEPA process from that chapter and instead, have all SEPA process standards contained in Chapter 19.04.</p> <p>The proposed amendments will: 1) clarify the position of SEPA Responsible Official; 2) augment notification requirements for SEPA actions; and 3) delineate the fee and billing process to be used during the preparation of environmental impact statements.</p> <p>The Planning Commission considered these amendments at a public hearing in August and recommends approval.</p>			
<p><b>COMMITTEE REVIEW AND RECOMMENDATION:</b> Approval Planning &amp; Comm. Services; recommended for approval by City Planning Commission</p>			
<p><b>RECOMMENDED ACTION:</b> MOTION to adopt Ordinance No. 10-XXX, amending Chapter 19.04 of the Black Diamond Municipal Code relating to the SEPA process.</p>			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	
September 16, 2010			

**19.04.040 Designation of responsible official.**

A. For those proposals for which the city is a lead agency, the responsible official shall be the ~~public works superintendent~~ community development director or such other person as the ~~superintendent~~ mayor may designate in writing.

B. For those proposals for which the city is a lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS), and perform any other functions assigned to the lead agency or responsible official by those sections of the SEPA rules that have been adopted by reference.

**19.04.180 Public notice.**

A. Whenever public notice is required, the city shall follow the procedures set forth in this section.

B. Public notice will be given in the following situations:

1. When the city issues the following determinations of nonsignificance (DNS):
  - a. DNS involving another agency with jurisdiction;
  - b. DNS involving the demolition of any structure or facility not exempted by WAC 197-11-800(2)(f) or 197-11-880;
  - c. DNS involving the issuance of a clearing or grading permit not exempted by WAC 197-11-800 through 197-11-890;
  - d. DNS issued following a request for early notice pursuant to WAC 197-11-350(2);
  - e. Mitigated DNS issued pursuant to WAC 197-11-350(3);
  - f. DNS issued following the withdrawal of a DS pursuant to WAC 197-11-360(4);
2. When the city issues a determination of significance to commence scoping;
3. When a draft EIS (DEIS) is available for public comment;
4. Whenever the city holds a public hearing pursuant to WAC 197-11-535;
5. Whenever the responsible official determines that public notice is required.

C. The city shall give public notice by using at least ~~one~~all of the following methods:

1. Posting the property, for site-specific proposals;
2. Publishing notice in the official city newspaper and, optionally, a newspaper of general circulation in the ~~county, city, or general area where the proposal is located;~~
3. Mailing notice to owners of property within 300 ft. of the proposal or a greater distance if needed to notify a minimum of twenty (20) of the nearest property owners; and other known interested individuals;
4. Mailing notice to other agencies with jurisdiction and affected Indian tribes;
5. Any other method reasonably calculated to inform the public and other agencies or required by statute or ordinance, including posting notice on the city's website.

D. Notice of public hearings shall be published no later than ten days before the hearing in the city's official newspaper and, optionally, a newspaper of general circulation in the city. ~~Notice of public hearings on nonproject proposals shall be published in a newspaper of general circulation in the city.~~

E. The city may require an applicant to compensate the city for the costs of compliance with the public notice requirements for the applicant's proposal or provide services and materials to assist.

#### **19.04.250 Appeals.**

A. Any aggrieved person may appeal a threshold determination, adequacy of a final EIS and the conditions or denials of a requested action made by a nonelected city official pursuant to the procedures set forth in this section. No other SEPA appeal shall be allowed. No person may seek judicial review of a SEPA decision without first exhausting the administrative appeal process set forth herein.

B. All appeals filed pursuant to this section must be filed in writing with the community development director within fourteen calendar days of the date of the decision appealed. The written appeal shall state concisely the basis or bases for the appeal, and the specific relief or remedy sought.

C. A fee of \$250.00 shall accompany each appeal.

D. On receipt of a timely written notice of appeal, the director shall advise the hearing examiner of the appeal and request that a date for considering the appeal be established. Provided that, if there is a concurrent land use application requiring a hearing examiner

public hearing, then the two hearings shall be combined. The hearing examiner shall make the final decision on a SEPA appeal.

E. All relevant evidence shall be received during the hearing of the appeal and the decision shall be made de novo. The procedural determination by the city's responsible official shall carry substantial weight in any appeal proceeding. The burden of proof shall be on the appellant, to demonstrate error by a preponderance of the evidence.

F. For any appeal under this section, the hearing examiner shall provide a record that shall consist of the following:

1. Findings and conclusions;
2. Testimony under oath; and
3. A taped or written transcript.

G. The city may require the applicant to provide an electronic transcript.

H. The city shall give official notice whenever it issues a permit or approval for which a statute or ordinance establishes a time limit for commencing judicial appeal. Appeal from the hearing examiner's decision on a SEPA appeal is to superior court. The judicial appeal must be filed within 21 days after the hearing examiner renders a decision, unless the SEPA appeal is consolidated with the underlying governmental action, such as a permit application. If there is consolidation, judicial appeal of the hearing examiner's decision on the SEPA appeal must be filed within 21 days after the city's final decision on the underlying governmental action.

I. This chapter constitutes the exhaustive administrative process to appeal a SEPA decision. Notwithstanding any other provision of the Municipal Code, the provisions of this chapter shall apply. This provision shall be construed in conjunction with BDMC 18.98, RCW 36.70B, and WAC 197-11-680 (3)(a)(v).

#### **19.04.300 Fees.**

The city shall require the following fees for its activities in accordance with the provisions of this chapter:

A. Threshold Determination. For every environmental checklist the city will review when it is lead agency, the city shall collect a fee ~~of sixty dollars~~ as established in the city's fee schedule from the proponent of the proposal prior to undertaking the threshold determination. The time periods provided by this chapter for making a threshold determination shall not begin to run until payment of fees. When the city assists the applicant or completes the environmental checklist at the applicant's request or under Section 19.04.120 of this chapter, an additional ~~thirty dollars~~ fee, as established in the fee schedule, shall be collected.

B. Environmental Impact Statement.

1. When the city is the lead agency for a proposal requiring an EIS and the responsible official determines that the EIS shall be prepared by employees of the city, the city may charge and collect a reasonable fee from any applicant to cover costs incurred, including overhead, ~~by the city~~ in preparing the EIS. The responsible official shall advise the applicant of the projected costs for the EIS prior to actual preparation.

2. The responsible official may determine that the city will contract directly with a consultant for preparation of an EIS, or a portion of the EIS, for activities initiated by some persons or entity other than the city and may bill such costs and expenses (plus an administrative fee) directly to the applicant. Such consultants shall be selected by the city.

3. The applicant shall pay at least 50% of the total projected amount to prepare the EIS to the city prior to commencing work commencing. Additional funds shall be provided when so requested by the city. The city will refund the excess, if any, at the completion of the EIS. If the city's costs exceed the projected costs, the applicant shall immediately pay the excess. If a proposal is modified so that an EIS is no longer required, the responsible official shall refund any fees collected under subdivisions 1 and 2 of this subsection which remain after incurred costs, including overhead, are paid.

C. The city may collect a reasonable administrative fee from an applicant to cover the cost of meeting the public notice requirements of this chapter ~~relating to the applicant's proposal.~~ and its overhead expenses for overseeing preparation of the EIS.

D. The city may charge any person for copies of any document prepared under this chapter, and for mailing the document, in a manner provided by RCW Chapter 42.17.

# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
<b>SUBJECT:</b> <b>Resolution No. 10-710, acceptance of the Railroad Avenue Improvements Project</b>	<b>Agenda Date: September 16, 2010</b>		<b>AB10-075</b>
	Department/Committee/Individual	Created	Reviewed
	Mayor Rebecca Olness		
	City Administrator –		
	City Attorney –Chris Bacha		
	City Clerk – Brenda L. Martinez		
	Finance – May Miller		
	Public Works – Seth Boettcher	X	
	Economic Devel. – Andy Williamson		
	Police – Jamey Kiblinger		
Court – Stephanie Metcalf			
Comm. Dev. – Steve Pilcher			
<b>Attachments: Resolution No. 10-710</b>			
<b>SUMMARY STATEMENT:</b>  This is a formal action required by the Council that starts a 45 day waiting period to where an outside vendor, supplier or laborer would have an opportunity to file a claim against this project pursuant to RCW 60.28.011 (2). After 45 days the retainage being held by the City can be released once the City has received for following documents: <ul style="list-style-type: none"> <li>• An affidavit of no liens,</li> <li>• A release from the Department of Revenue that all taxes have been paid</li> <li>• And a release from any claims from the Department of Labor and Industries, pursuant to RCW 60.28.051</li> </ul> Currently the project is expected to come in on budget. The final costs will be known at project close out.			
<b>COMMITTEE REVIEW AND RECOMMENDATION:</b> Public Works Committee is recommending approval.			
<b>RECOMMENDED ACTION: MOTION to adopt Resolution No. 10-710, accepting the Railroad Avenue Improvements Project by J.R. Hayes and Sons according to the contract documents.</b>			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
September 16, 2010			

**RESOLUTION NO. 10-710**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BLACK DIAMOND, KING COUNTY, WASHINGTON  
REGARDING FINAL ACCEPTANCE OF THE RAILROAD  
AVENUE IMPROVEMENTS PROJECT**

**WHEREAS**, the City awarded the Railroad Avenue Improvements Project contract to J.R. Hayes and Sons on January 21, 2010; and

**WHEREAS**, J.R. Hayes and Sons has completed the Railroad Avenue Improvements Project according to the contract;

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

**Section 1.** the City hereby accepts the Railroad Avenue Improvements Project as complete and as set forth in that contract with J.R. Hayes and Sons.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 16<sup>TH</sup> DAY OF SEPTEMBER, 2010.**

CITY OF BLACK DIAMOND:

\_\_\_\_\_  
Rebecca Olness, Mayor

Attest:

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