



**CITY OF BLACK DIAMOND**  
**August 18, 2011 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:**

**APPOINTMENTS, PRESENTATIONS, ANNOUNCEMENTS**

**Proclamation** – Recovery Month

Mayor Olness

**UNFINISHED BUSINESS:**

**NEW BUSINESS:**

1) **AB11-053** – Resolution Awarding Newcastle Intersection Project

Mr. Boettcher

2) **AB11-054** – Ordinance Amending Black Diamond Municipal Code Regarding Business Licenses

Mr. Pilcher

**DEPARTMENT REPORTS:**

**MAYOR'S REPORT:**

**COUNCIL REPORTS:**

**ATTORNEY REPORT:**

**PUBLIC COMMENTS:**

**CONSENT AGENDA:**

3) **Claim Checks** – August 18, 2011, No. 37276 through No. 37333 in the amount of \$166,196.43

4) **Payroll Checks** – July 31, 2011 No. 17488 through No. 17518 (voided No. 17493 through No. 17498) and ACH Payment for a total amount of \$283,469.90

5) **Minutes** –Regular Council Meeting of August 4, 2011

**EXECUTIVE SESSION:**

**ADJOURNMENT:**

# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
<b>SUBJECT:</b> <b>Resolution No. 11-764, awarding a construction contract to Lakeridge Paving Co., LLC for the 2011 Pavement Patching Project Lawson Street at Newcastle Intersection in the amount of \$27,501.55.</b> Cost Impact: \$33,001.55 Fund Source: REET 2 Timeline: September 2011	<b>Agenda Date: August 18, 2011</b>		<b>AB11-053</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		X
	Police -- Jamey Kiblinger		
Court -- Stephanie Metcalf			
Comm. Dev. -- Steve Pilcher			
<b>Attachments: Resolution No. 11-764; Bid and Contract Form, Bid Tabulation</b>			
<b>SUMMARY STATEMENT:</b> This project addresses failed asphalt pavement on Lawson Street at Newcastle Drive. Failed asphalt will be removed then patched with hot mix asphalt concrete.  This patching project went out to bid on July 27, 2011 to nine contractors selected from the Municipal Small Works Roster. We received 5 bids on August 4, 2011 with Lakeridge Paving Co., LLC providing the lowest responsible bid in the amount of \$27,501.55. \$5,500 will also be set aside as a contingency cost to cover any overruns or changes orders that may come up during construction.  <b>BUDGET</b> The City has planned and budgeted \$80,000. The design work was completed by City staff. Review of bid documents was completed by Parametrix (not to exceed \$600).			
<b>COMMITTEE REVIEW AND RECOMMENDATION:</b> Public Works Committee is recommending approval.			
<b>RECOMMENDED ACTION: MOTION to adopt Resolution No. 11-764, authorizing the Mayor to execute a \$27,501.55 contract with Lakeridge Paving Co., LLC for the 2011 Pavement Patching Project Lawson Street @ Newcastle Intersection and authorize \$5,500.00 to cover potential change orders.</b>			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
August 18, 2011			

**RESOLUTION NO. 11-764**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BLACK DIAMOND, KING COUNTY, WASHINGTON  
AWARDING THE LOW BID ON THE 2011 OVERLAY  
PROJECT LAWSON STREET AT NEWCASTLE  
INTERSECTION TO LAKERIDGE PAVING CO., LLC**

**WHEREAS**, the City has planned and budgeted for the 2011 Overlay Project Lawson Street at Newcastle Intersection; and

**WHEREAS**, the City has received five bids on August 4, 2011; and

**WHEREAS**, Lakeridge Paving Co., LLC was the low bidder and has met all conditions of providing a responsible bid;

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

**Section 1.** Authorizing the Mayor to award the bid of the 2011 Overlay Project Lawson Street at Newcastle Intersection to Lakeridge Paving Co., LLC in the amount of \$27,501.55 and authorize the Mayor to execute a contract for the same.

**Section 2.** The City Council authorizes additional expenditures of up to \$5,500 to cover any change orders that may come up during construction.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 18<sup>TH</sup> DAY OF AUGUST, 2011.**

CITY OF BLACK DIAMOND:

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

Attest:

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

**CITY OF BLACK DIAMOND**  
**SMALL WORKS CONTRACT**

For 2011 Pavement Patching Project Lawson Street at Newcastle Intersection

THIS SMALL WORKS CONTRACT (the "Contract") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between the City of Black Diamond, a municipal corporation operating as a non-charter, optional municipal code city (the City) and Lakeridge Paving Co., LLC (the Contractor).

WHEREAS, pursuant to the invitation of the City for bids, the Contractor did, in accordance therewith, file with the City a proposal containing an offer which was invited by said notice, and

WHEREAS, the City has heretofore determined that said offer was the lowest responsive and responsible bid submitted;

NOW, THEREFORE, in consideration of the terms and conditions contained herein, and in consideration of Contractor being included on the City's Small Works Roster and payments and agreements to be made and performed by the City in the event the City awards a Small Works Roster Project to the Contractor, the parties hereto covenant and agree as follows:

1. Contract Scope of Work; Contract Documents. The Contractor shall in a workmanlike manner do all work and furnish all tools, materials, and equipment for the 2011 Street Patching Project primarily on Lawson Street in the vicinity of the intersection with Newcastle Street, (the "Project") in accordance with and as described in the following Contract Documents (incorporated by reference in this Contract):

- A. The Contract;
- B. Supplemental Conditions;
- C. Addenda;
- D. Plans and specifications issued by the City in connection with the Invitation to Bid or request for proposal (Attachment "A");
- E. City Engineering Design Standards (except as modified by any technical specifications in the plans and specifications);
- F. Instructions for Bidders; Notice to Bidders, Bidders Checklist, and bid Proposal;

- G. The applicable sections 1-10, 5-02, 5-04, 8-01 and Division 9 of the 2010 Washington State Department of Transportation Standards Specifications for Road, Bridge, and Municipal Construction except for Division I APWA (American Public Works Association) supplement ("Standard Specifications"). Where the Specifications refer to Engineer, project manager architect, consulting engineer or Secretary, will mean the City Public Works Director or his designee. Where the Standard Specifications refer to; "State," "State of Washington" or "DOT" are replaced with "City".

In the event of a conflict or discrepancy among or in the Contract Documents, interpretation shall be governed in the priority listed and set forth above. The Contractor shall provide and bear the expense of all equipment, work and labor of any sort whatsoever they may be required for the transfer of materials and for constructing and completing the work provided for in the specifications to be furnished by the City.

City reserves the right to add or delete work or items from this Contract, subject to appropriate adjustments to the Contract price. Added items or work will be related to those on Contract, and additions or deletions will be by mutual agreement, with prices consistent with the original bid price margins, and evidenced by a written Contract change notice from the City. The execution of a change order shall constitute a waiver of Claims by the Contractor arising out of the Work to be performed or deleted pursuant to the change order, except as specifically described in the change order. General reservations of rights will be deemed waived and void.

2. Project Administration/Notice to Proceed. The City Administrator, or his or her designee, shall administer this Contract and shall have all authority provided for the City under this Contract including all project approvals. Contractor shall not commence work until Notice to Proceed has been given by the City. All work performed under this Contract will be monitored and inspected by the City Administrator or his designee, and accepted by same.

3. Contract Amount; Compensation (Fixed Sum). The City hereby promises and agrees with the Contractor to employ, and does employ the Contractor to provide materials and to do and cause to be done the above described work and to complete and finish the same according to the Exhibit A and the terms and conditions herein contained. The City hereby contracts to pay for the Contractor according to the schedule of prices committed to in the bid proposal for a total projected sum of Twenty-seven thousand five hundred one and 55/100 dollars (\$27,501.55) plus any applicable sales or use tax. Progress payments shall be made after the date set forth in the Notice to Proceed monthly upon submittal of a pay request for work performed to date as verified by the City. Failure to perform any of the obligations under the contract by Contractor may be decreed by the City to be adequate reason for withholding any payments until compliance is achieved, including withholding amounts from any payment based on substantial completion to cover the City's cost to complete any punch list items.

4. Time for Completion; Penalty. The Contractor will achieve substantial completion (as that term is defined below) to the reasonable satisfaction of the City, free of all claims, liens and charges, within fourteen (14) calendar days of a Notice to Proceed. The City and Contractor recognize that time is of the essence of this Agreement and that the City will suffer financial loss if the Work is not substantially completed within the times specified in the above paragraph, plus any extensions thereof allowed. The City may seek delay damages or may remove the Contractor from the City's small works roster for undue delay in completing this project. For purposes of this Contract, substantial completion shall mean the date that the City determines that it has full and unrestricted use and benefit of the facilities, both from the operational and safety standpoint, and only minor incidental work, replacement of temporary substitute facilities, or correction or repair remains for the physical completion of the total contract. Physical completion date is the date all of the work is physically completed on the project. All documentation required by the Contract and required by law does not necessarily need to be furnished by the Contractor by this date.

5. Prevailing Wages. The Contractor, and its subcontractors, if any, shall fully comply with all applicable provisions of RCW Chapter 39.12, concerning payment of prevailing wages, including the filing and payment of fees for all required statements and affidavits. The prevailing wages in effect at the time of proposal for the Project may be included in the Project specifications when the City makes a solicitation for quotations. The Contractor may also determine the prevailing wages in effect by contacting the Washington Department of Labor and Industries, ESAC Division, General Administration Building, Olympia, Washington 98504 (360) 902-5335.

Prevailing wage rates may also be found on the Department of Labor and Industries website:

<https://fortress.wa.gov/lni/wagelookup/prvWagelookup.aspx>

The Contractor shall post the prevailing rate of wage statement in a location readily visible to workers at the job site, or as allowed by RCW 39.12.020. The "Statement of Intent to Pay Prevailing Wages" shall include:

1. The Contractor's registration certificate number; and
2. The prevailing wage rate for each classification of workers entitled to prevailing wages under RCW 39.12.020 and the estimated number of workers in each classification.

Statements of intent to pay prevailing wages and affidavits of wages paid shall be on forms approved by the Department of Labor and Industries.

6. Payment & Performance Bond and Retainage Requirement. Unless waived or the Contractor elects to have the City hold retainage, as provided below, the Contractor shall provide a performance and payment bond for 100% of the bid proposal to the City prior to commencement of work guaranteeing the full and faithful performance by the Contractor of the terms and conditions of this Contract.

Projects under \$35,000 (including tax): If the total cost of this project, including Washington State sales tax, is \$35,000 or less, the contractor may, in lieu of the bond, elect to have the city retain fifty percent of the contract amount for a period of forty-five days after the date of final acceptance, or until receipt of all necessary releases from the Department of Labor and Industries and settlement of any liens filed under chapter 60.28 RCW, whichever is later. Contractor election shall be in the form of election attached hereto as Exhibit "B".

Initial: \_\_\_\_\_ (Contractor)

7. Conditions of Work. By submitting a proposal in response to the City's solicitation for quotations, the Contractor represents and warrants to the City that the Contractor has fully informed himself/herself/itself of all conditions relating to the work involved for completing the Project. In prosecuting the work, the Contractor shall employ such methods or means as will not interfere with or interrupt the work of the City or its agents, employees or contractors.

8. Contractor's Responsibility. The Contractor will prosecute the work in accordance with instructions, descriptions and/or plans and specifications provided by the City. The Contractor shall carry on the work at his/her/its own risk until the same is fully completed and accepted, and shall, in case of any accident, destruction or injury to the work and/or materials before its final completion and acceptance, repair or replace forthwith the Work and/or materials so injured, damaged or destroyed, at his own expense and to the satisfaction of the City. When materials and equipment are furnished by others for installation or erection by the Contractor, the Contractor shall receive, unload, store and handle same at site and become responsible therefore as though such materials and/or equipment were being furnished by the Contractor. The Contractor shall procure all permits (unless permits are secured by the City) and licenses, pay all charges, fees and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the work. The Contractor shall be responsible for preparing working drawings and shall submit them to the City for approval prior to commencement of work. For purposes of this Contract, working drawings shall mean, shop drawings, shop plans, erection plans, falsework plans, framework plans, cofferdam, cribbing and shoring plans, or any other supplementary plans or similar data, including a schedule of submittal dates for working drawings where specified, which the Contractor will rely on for purposes of conducting the work for the Project.

9. Contractor Clean-Up. Prior to Physical Completion, all debris resulting from Contractor's work, delivery or installation of equipment shall be disposed of entirely by the Contractor in an efficient and expeditious manner as required and directed by the City.

10. Safety. The Contractor and his subcontractors shall take all safety precautions and furnish and install all guards necessary for the prevention of accidents, and shall comply with all laws and regulations with regard to the prosecution of the Work. The Contractor agrees to furnish Material Safety Data Sheets (Form OSHA-20) applicable for hazardous or potentially hazardous

products. Contractor agrees to comply with the conditions of the Washington Industrial Safety and Health Act of 1970, and standards and regulations issued thereunder, and certify that all items furnished and purchased will conform to and comply with said standards and regulations. Contractor further agrees to indemnify and hold harmless City from damages assessed against City because of Contractor's failure to comply with the Acts and the standards issued thereunder and for the failure of the items furnished under this order to so comply.

11. Insurance and Indemnity Requirements. The Contractor shall, at its expense, provide for the payment of workers compensation benefits to his/her/its employees and/or to their dependents employed on or in connection with the work covered by the Notice to Proceed, in accordance with the laws of the state of Washington. The Contractor shall also, at Contractor's expense, provide for minimum insurance coverages as follows: general liability in the amount of \$500,000, employer's liability in the amount of \$500,000. This insurance shall be in effect prior to performing any work under the Contract and shall remain in effect for the duration of the work covered by the Notice to Proceed. Additional insurance requirements or conditions may be added by addendum and the City, at its discretion, may require the Contractor to provide evidence of such insurance. These insurance requirements shall not be deemed to limit the Contractor's liability to the City or any third party. Contractor shall provide a certificate of insurance acceptable to the City with the City as an additional insured under the Contractor's comprehensive general liability policy. Such policies shall be deemed primary to the City's insurance policies and non-contributing.

12. Assumption of Liability. The Contractor will indemnify and hold harmless the City and any and all of the City's officers, principals, agents and employees, from any liability, loss, damage, cost, charge or expense, whether direct or indirect and whether occasioned by injury or loss to persons or property, to which the City or said other indemnitees may be put or subject by reason of any act, action, neglect, omission or default by the Contractor or any of the Contractor's or subcontractor's officers, principals, agents or employees, arising from or relating to the Work, specifically including any liability or alleged liability of any indemnitees that may arise from injury or loss suffered by any employee of the Contractor or any subcontractor regardless of any immunity provided by the Washington Industrial Insurance Act, RCW Title 51, or any other applicable law. This section shall not apply where such injury or loss is solely caused by the negligence of an indemnitee. With regard to any claim based on the concurrent negligence of the Contractor, and the Contractor's agents or employees, and the City, the Contractor's liability under this section shall apply to the full extent of the negligence of the Contractor, and the Contractor's agents or employees.

13. Warranty/Correction of Work. The Contractor warrants to the City the work and all component parts thereof provided for under the Contract shall perform and operate for the purpose(s) specified, shall be new and free from defects in material and workmanship, shall meet all applicable specifications, including those relating to performance contained in the Contract, and that the Work will be performed in a competent manner in accordance with accepted professional standards. The foregoing warranties shall apply to defects or deficiencies occurring within a period of one (1) year from the date of final acceptance of the Work. If within one year

after the date of final acceptance, any of the work or component parts thereof are found not to be in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after written notice to do so. If the Contractor fails to correct nonconforming work or component parts therefore within a reasonable time after notice, City may, without prejudice to other remedies it may have, correct such deficiencies, and the Contractor shall pay the reasonable cost to the City, plus 10% City administrative overhead fee. Neither the final payment, acceptance, nor partial or entire use of the Work or any component part therefore by the City, shall relieve the Contractor of liability with respect of the warranties referred to in this contract or any other warranties expressed or implied. The warranty provided herein is in addition to, and not in lieu of, any other guarantee and/or warranties, rights or remedies and shall not in any way limit the same.

14. Claims and Dispute Resolution: A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. A Claim may also include other disputes and matters in question between City and Contractor arising out of or related to the Contract. Claims must be made in writing. The responsibility to substantiate Claims shall rest with the party making the Claim. A notice of a potential or future Claim does not constitute a Claim. Any Claims of the Contractor against the City for damages, additional payment for any reason, or extension of time, whether under the Contract or otherwise, must be made in strict accordance with the applicable provisions of the Contract. No act, omissions, or knowledge, actual or constructive, of City shall in any way be deemed a waiver of the requirement for timely written notice and a timely written Claim unless City provides Contractor with an explicit, unequivocal written waiver.

a. All claims must be addressed to: The Mayor, Rebecca Olness, City of Black Diamond, at the following address:

P.O. Box 599  
Black Diamond, WA 98010

b. Contractor shall submit in writing to City all Claims, within 14 days of the event giving rise to the Claim. Written Claim must specify the conditions and requested relief. The City shall consider such Claim and a representative of the City shall meet with the Contractor to confer and attempt to resolve the Claim.

c. Contractor shall diligently carry on the Work and maintain the Contractor's Construction Schedule during any dispute resolution proceedings, unless otherwise agreed by it and the City in writing.

Mediation: If the Claim is not resolved in the process provided immediately above, neither the Contractor nor any Subcontractor or Supplier of any tier may bring a claim against the City in litigation unless the Claim is first subject to nonbinding mediation before a single mediator under the Voluntary Construction Mediation Rules of the American Arbitration Association. This requirement cannot be waived except by an explicit written waiver signed by the City and Contractor.

Litigation: Contractor may bring no litigation on Claims unless such Claims have been properly raised and considered as provided above. All unresolved Claims of Contractor shall be solved and released unless Contractor complies with the time limits above, and litigation is served and filed within the earlier of (a) 120 days after the day of Substantial Completion designated in writing by the City (provided that a mediation session has occurred as provided above); or (b) 60 days after Final Acceptance. This requirement cannot be waived except by an explicit written waiver signed by City.

15. Subcontracts. The Contractor may delegate portions of the work disclosed in the bid proposal. The Contractor shall not delegate any additional portions of the Work or change subcontractors without the advanced written approval of the City.

16. Assignment. The Contractor shall not assign the rights under the Small Works Contract, or any part thereof without the advanced written approval of the City.

17. Applicable Law. Contractor shall comply with all applicable federal, state and local laws and regulations, which are deemed to be incorporated into this Contract. This Contract shall be construed, for all purposes, solely and exclusively in accordance and pursuant to the laws of the State of Washington. Venue of any action filed to enforce or interpret the provisions of this Contract shall be in King County. In the event of litigation to enforce the provisions of this Contract, the prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief allowed.

IN WITNESS WHEREOF the parties hereto have caused this agreement to be executed the day and year first hereinabove written.

**CITY OF BLACK DIAMOND:**

**LAKERIDGE PAVING CO., LLC:**

\_\_\_\_\_  
Rebecca Olness, Mayor/City Manager

\_\_\_\_\_  
Signature

Printed: \_\_\_\_\_

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

Federal Tax ID No. \_\_\_\_\_

Address: P.O. Box 8500

Covington, WA 98042

Attested:

---

CITY CLERK

Approved as to form:

---

CITY ATTORNEY

PERFORMANCE AND PAYMENT BOND

**CITY OF BLACK DIAMOND  
PUBLIC WORKS DEPARTMENT  
P.O. BOX 599  
24301 ROBERTS DRIVE  
BLACK DIAMOND, WA 98010  
Ph: 360-886-2560**

NAME OF PROJECT: \_\_\_\_\_ BOND NO.: \_\_\_\_\_

LOCATION/ADDRESS \_\_\_\_\_

PROJECT NO.: \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS that \_\_\_\_\_,  
as Principal, and \_\_\_\_\_ Company, as Surety,  
licensed to do business within Washington State, are held and firmly bound under the City of Black  
Diamond, State of Washington, in the full sum of \_\_\_\_\_ Dollars  
(\$ \_\_\_\_\_) lawful money of the United States, for the payment of which well and  
truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns,  
jointly and severally, firmly by these presents.

The conditions of the obligations are such that,

WHEREAS, the Principal has entered into an Agreement in writing with the City of Black  
Diamond dated \_\_\_\_\_, 20\_\_\_\_, for the \_\_\_\_\_  
**PROJECT** according to the terms, conditions, and covenants specified in the Contract form including all  
of the Contract Documents therein referred to, which are hereby referred to and made a part hereof as  
fully and completely as though set forth in detail herein; and

WHEREAS, it is understood and a part of the consideration for this obligation that the City of  
Black Diamond shall have the right to sue on this Bond in its own name to recover for any loss, injury,  
damage, or liability whatsoever sustained or incurred by it, by reason of any breach of the Contract  
Documents, or of any provision in this Bond; and

WHEREAS, suit on this Bond, if brought for breach of performance by Principal as to a condition  
hereof (including any condition or performance responsibility incorporated by reference), may be  
commenced against both the Principal and Surety as joint and several obligators, with or without prior  
notice of such breach of performance by Principal having been given to Surety;

NOW, THEREFORE, if the Principal shall well, truly, and faithfully perform all of the provisions  
and fulfill all of the undertakings, covenants, terms, conditions, and agreements of said Contract during  
the period of the original Contract, and any extension thereof that may be granted by the City of Black  
Diamond, with or without notice to the Surety, and during the life of any guarantee required under the  
Contract and shall also well and truly perform and fulfill all of the undertakings, covenants, terms,  
conditions, and agreements of any and all duly authorized modifications of said Contract that may  
hereafter be made, notice of which modifications to the Surety being hereby waived; and furthermore,  
shall pay all laborers, mechanics, subcontractors and materialmen, and all persons who shall supply such  
person or persons, and such Principal or subcontractors with the provisions and supplies for the carrying



to me known to be the individual described in and who executed the within and foregoing instrument and acknowledged to me that he signed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington  
Washington, residing at \_\_\_\_\_  
\_\_\_\_\_

STATE OF WASHINGTON    )  
  ) SS.  
COUNTY OF KING        )

On this day personally appeared before me \_\_\_\_\_, to me known to be the Attorney-in-Fact of the \_\_\_\_\_ Company, a surety, that executed the within and foregoing instrument, and acknowledged the said corporation for the purposes therein mentioned, and on oath, stated that he was authorized to execute said instrument on behalf of said Surety, and the seal affixed thereto is the corporate seal of said Surety corporation.

**CERTIFICATE AS TO CORPORATE PRINCIPAL**

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_ of the corporation named as Contractor in the Agreement attached hereto, that \_\_\_\_\_, who signed said Agreement on behalf of the Contractor, was the \_\_\_\_\_ of said corporation; that said Agreement was duly signed on and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

By: \_\_\_\_\_

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

State of: \_\_\_\_\_ )

)SS.

County of: \_\_\_\_\_ )

\_\_\_\_\_ being duly sworn deposes and says that he is \_\_\_\_\_ of \_\_\_\_\_ (Name of Organization).

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_, 20\_\_\_\_.

Bond No. \_\_\_\_\_

**CERTIFICATE AS TO CORPORATE SEAL**

I, \_\_\_\_\_, hereby certify that I am the  
(Assistant) Secretary of the Corporation named as Principal in the within Bond; that  
\_\_\_\_\_ signed the said Bond on behalf of the Principal was  
\_\_\_\_\_ of said Corporation; that I know his signature thereto is  
genuine, and that said Bond was duly signed, sealed, and attested for in behalf of said Corporation by  
authority of its governing body.

\_\_\_\_\_  
Secretary or Assistant Secretary

A copy of this bond shall be filed with the County Auditor, except in the case where the Contract is with a  
City or Town.

**PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE CERTIFICATE**

Contract No. \_\_\_\_\_

Name of Project \_\_\_\_\_

I certify that my costs to provide additional insurance for The City of Black Diamond pursuant to RCW 48, whereby the Contractor shall obtain and keep in force during the term of the contract, public liability and property damage insurance with companies or through sources approved by the State Insurance Commissioner.

The City of Black Diamond shall be specifically named as an insured with the same company which insures the Contractor or by an endorsement to an existing policy or with a separate approved carrier for this project. (Check One)

\_\_\_\_\_ are at no additional cost to insured.

\_\_\_\_\_ are \$\_\_\_\_\_ for The City of Black Diamond portion only.

\_\_\_\_\_ are not identifiable.

I declare under penalty or perjury under the laws of the State of Washington that the foregoing is true and correct.

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

Signature: \_\_\_\_\_

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

Firm: \_\_\_\_\_

**2011 Pavement Patching Project  
Lawson Street @ Newcastle  
Intersection**

**Construction Documents**

*Prepared for*

**The City of Black Diamond**  
P.O. Bo 599  
Black Diamond, WA 98010

*Prepared by*

**Seth Boettcher, PE**  
Public Works Department  
24301 Roberts Drive  
Black Diamond, WA 98010  
[sboettcher@ci.blackdiamond.wa.us](mailto:sboettcher@ci.blackdiamond.wa.us)

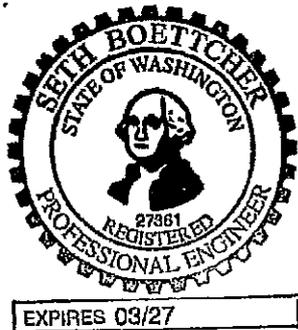
**July 2011**

## CERTIFICATION

The technical material and data contained in this document were prepared under the supervision and direction of the undersigned, whose seal, as a professional engineer licensed to practice as such, is affixed below.

Prepared and Approved by Seth Boettcher, P.E.

Seth Boettcher, P.E.



## **BIDDER'S CHECKLIST**

The bidder's attention is especially called to the following forms, which must be completed in full as required and submitted collectively as the Bid Proposal package:

- **Bid Proposal Package**

1. **PROPOSAL**

The proposal form must be filled out to be considered responsive. The Price Per Unit and Total Amount must be shown in the spaces provided within the "Schedule of Prices."

The following documents are to be submitted with the proposal:

- **NON-COLLUSION CERTIFICATE**
- **SUBCONTRACTOR LIST**
- **ACKNOWLEDGING RECEIPT OF ADDENDA AND SIGNATURES**

- **Contract Forms**

The following forms are to be executed and submitted within ten (10) calendar days after award of the Contract:

1. **CONTRACTOR AGREEMENT**

This public works contract to be executed by the successful bidder in triplicate.

2. **PERFORMANCE AND PAYMENT BOND**

To be executed by the successful bidder and his surety company.

3. **CERTIFICATE AS TO CORPORATE PRINCIPAL**

4. **CERTIFICATE AS TO CORPORATE SEAL**

5. **PROOF OF INSURANCE**

Copy of policy and appropriate endorsements to be submitted with the Public Liability and Property Damage Insurance Certificate.

**THE CITY OF BLACK DIAMOND  
2011 OVERLAY PROJECT**

**BID PROPOSAL**

**2011 Pavement Patching Project**

**Lawson Street at Newcastle Intersection**

The City of Black Diamond is hereinafter referred to as "the City"

1. The scheduled work is funded entirely by City of Black Diamond funds.
2. The undersigned hereby certifies that he has examined the location and construction detail work as outlined on the Plans and Specifications for the City of Black Diamond 2011 Pavement Patching Project Lawson Street at Newcastle Intersection and is familiar with the local conditions at the location of the work to be done, and has read and thoroughly understands the Plans and Specifications and the Contract governing the work and the method by which payment will be made for said work in accordance with said Plans, Specifications, and Contract at the following scheduled unit prices. All items shall be filled out showing unit prices and total amount of each item.
3. The Contract amount shall be the unit price of each item. Correct extensions based on the unit prices bid and the approximate quantities shown are for the comparison for bid only, and payments for unit priced items will be based on actual quantities measured in accordance with the requirements of the Contract Specifications. Limits of lump sum priced items will be as described in the Contract Drawings and Specifications.

The undersigned has checked the above amounts and understands that the City will not be responsible for any errors or omissions on the part of the undersigned in making up this proposal.

In order for the Owner to consider a proposal, all items on the proposal must be filled in completely.

4. It is agreed that this proposal may not be withdrawn within a period of sixty (60) days after the date set for the opening thereof.
5. In accordance with the Specifications, the undersigned further agrees to so plan the work and to prosecute it with such diligence that said work shall be commenced within ten (10) days after execution of the agreement. All work on this project shall be completed within the time limits indicated in the Contract Documents.
6. Receipt of the following Addenda to the Plans and/or Specifications is hereto acknowledged:

**Addendum**

<u>No.</u>	<u>Addendum Receipt Date</u>	<u>Signed Acknowledgement</u>
1.	None	N/A
2.	_____	_____
3.	_____	_____
4.	_____	_____

**THE CITY OF BLACK DIAMOND  
2011 PAVEMENT PATCHING PROJECT  
Lawson Street @ Newcastle Intersection**

**SCHEDULE OF PRICES**

<b>ITEM NO.</b>	<b>SECTION</b>	<b>ITEM DESCRIPTION</b>	<b>UNIT</b>	<b>APPROX QUANTITY</b>	<b>UNIT PRICE DOLLAR CENTS</b>	<b>AMOUNT DOLLAR CENTS</b>
1	1-09	MOBILIZATION	LS	1	1,000.00	\$1,000.00
2	1-10	PROJECT TEMPORARY TRAFFIC CONTROL	LS	1	1,628.00	\$1,628.00
3	4-04	CRUSHED SURFACING TOP COURSE	TON	7	56.00	\$392.00
4	2-02	PLANING BITUMINOUS PAVEMENT FOR PAVEMENT REPAIR AREAS	4" SY	561	13.55	\$7,601.55
5	5-04	HMA CL. 1/2 IN. PG 64-22 FOR PAVEMENT REPAIR	4" TON	130	116.00	\$15,080.00
6	5-04	CRACK SEALING	LF	1800	.50	\$900.00
7	8-13	ADJUST UTILITIES TO GRADE	EA	4	225.00	\$900.00
<b>TOTAL SCHEDULE:</b>			<b>\$</b>			<b>\$27,501.55</b>

**Failure to return this Declaration as part of the bid proposal package will make the bid nonresponsive and ineligible for award.**

### **NON-COLLUSION DECLARATION**

**I, by signing the proposal, hereby declare, under penalty of perjury under the laws of the United States that the following statements are true and correct:**

1. That the undersigned person(s), firm, association or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this proposal is submitted.
2. That by signing the signature page of this proposal, I am deemed to have signed and to have agreed to the provisions of this declaration.

### **NOTICE TO ALL BIDDERS**

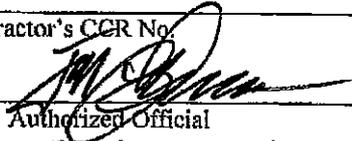
To report rigging activities call:

**1-800-424-9071**

The U.S. Department of Transportation (USDOT) operates the above toll-free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m., eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of USDOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the USDOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

NOTE: Failure to acknowledge receipt of the Addenda may be considered as an irregularity in the Proposal.

<u>Lakeridge Paving Co., LLC</u>	<u>August 4, 2011</u>
<u>Bidder</u>	<u>Date</u>
<u>LAKERPC050JM</u>	
<u>Contractor's License No.</u>	
<u>05-731-6457</u>	
<u>Contractor's DUNS No.</u>	
<u>057316457</u>	<u>8/31/2011</u>
<u>Contractor's CCR No.</u>	<u>Expiration Date</u>
By 	
<u>Authorized Official</u>	
Jon Cheetham, Managing Member	
Address:	
PO Box 8500	
<u>Covington, WA 98042</u>	

- NOTES: 1. If the bidder is a copartnership, so state, giving firm name under which business is transacted.  
2. If the bidder is a corporation, this proposal must be executed by its duly authorized officials.



### Subcontractor List

Prepared in compliance with RCW 39.30.080 as amended

#### To Be Submitted with the Bid Proposal

Project Name Black Diamond -Lawson/Newcastle Intersection

Failure to list subcontractors who are proposed to perform the work of heating, ventilation and air conditioning, plumbing, as described in Chapter 18.106 RCW, and electrical as described in Chapter 19.28 RCW will result in your bid being non-responsive and therefore void.

Subcontractor(s) that are proposed to perform the work of heating, ventilation and air conditioning, plumbing, as described in Chapter 18.106 RCW, and electrical as described in Chapter 19.28 RCW must be listed below. The work to be performed is to be listed below the subcontractor(s) name.

If no subcontractor is listed below, the bidder acknowledges that it does not intend to use any subcontractor to perform those items of work.

Subcontractor Name No Subcontractors on site for Lakeridge Paving Co.  
Work to be Performed \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Subcontractor Name \_\_\_\_\_  
Work to be Performed \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Subcontractor Name \_\_\_\_\_  
Work to be Performed \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Subcontractor Name \_\_\_\_\_  
Work to be Performed \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Subcontractor Name \_\_\_\_\_  
Work to be Performed \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

City of Black Diamond  
 PO Box 599  
 Black Diamond, WA 98010

Project: 2011 Pavement Patching Project, Lawson Street @ Newcastle Intersection  
 Bid Opening: August 4, 2011

Bidder  
&  
Address

Lakeridge Paving  
 PO Box 8500  
 Covington, WA 98042

Asphalt Patch Systems  
 8812 Canyon Road E  
 Puyallup, WA 98371

AA Asphaltting Inc.  
 2518 E. Valley Hwy  
 Sumner, WA 98390-9510

Item	Section	Item Description	Unit	Qty.	Unit Bid	Amount	Unit Bid	Amount	Unit Bid	Amount
1	1-09	Mobilization	LS	1	\$1,000.00	\$1,000.00	\$2,000.00	\$2,000.00	\$1,116.00	\$1,116.00
2	1-10	Project Temporary Traffic Control	LS	1	\$1,628.00	\$1,628.00	\$1,500.00	\$1,500.00	\$100.00	\$100.00
3	4-04	Crushed Surfacing Top Course	TON	7	\$56.00	\$392.00	\$80.00	\$560.00	\$50.00	\$350.00
4	2-02	Planing Bituminous Pavement for Pavement Repair Areas	SY	561	\$13.55	\$7,601.55	\$10.00	\$5,610.00	\$22.00	\$12,342.00
5	5-04	HMA Cl. 1/2 In. PG 64-22 for Pavement Repair	TON	130	\$116.00	\$15,080.00	\$134.00	\$17,420.00	\$148.00	\$19,240.00
6	5-04	Crack Sealing	LF	1800	\$0.50	\$900.00	\$1.00	\$1,800.00	\$0.60	\$1,080.00
7	8-13	Adjust Utilities to Grade	EA	4	\$225.00	\$900.00	\$150.00	\$600.00	\$60.00	\$240.00
<b>TOTAL CONTRACT AMOUNT BID</b>						<b>\$27,501.55</b>		<b>\$29,490.00</b>		<b>\$34,468.00</b>

*\*There was one minor bid error by Northwest Asphalt that had no effect on the outcome of the bid.*

City of Black Diamond  
 PO Box 599  
 Black Diamond, WA 98010

Project: 2011 Pavement Patching Project, Lawson Street @ Newcastle Intersection  
 Bid Opening: August 4, 2011

			Bidder & Address		Northwest Asphalt PO Box 2260 Renton, WA 98058		Watson Asphalt PO Box 845 Redmond, WA 98073		<i>Engineer's Estimate</i>	
Item	Section	Item Description	Unit	Qty.	Unit Bid	Amount	Unit Bid	Amount	Unit Bid	Amount
1	1-09	Mobilization	LS	1	\$3,000.00	\$3,000.00	\$5,030.00	\$5,030.00	\$2,014.29	\$2,014.29
2	1-10	Project Temporary Traffic Control	LS	1	\$4,600.00	\$4,600.00	\$4,950.00	\$4,950.00	\$1,500.00	\$1,500.00
3	4-04	Crushed Surfacing Top Course	TON	7	\$200.00	\$1,400.00	\$50.00	\$350.00	\$85.71	\$599.97
4	2-02	Planing Bituminous Pavement for Pavement Repair Areas	SY	561	\$29.16	*\$16,358.76	\$17.00	\$9,537.00	\$5.34	\$2,995.74
5	5-04	HMA Cl. 1/2 In. PG 64-22 for Pavement Repair	TON	130	\$150.00	\$19,500.00	\$168.00	\$21,840.00	\$117.00	\$15,210.00
6	5-04	Crack Sealing	LF	1800	\$1.50	\$2,700.00	\$5.00	\$9,000.00	\$0.55	\$990.00
7	8-13	Adjust Utilities to Grade	EA	4	\$370.00	\$1,480.00	\$600.00	\$2,400.00	\$200.00	\$800.00
<b>TOTAL CONTRACT AMOUNT BID</b>						<b>*\$49,038.76</b>		<b>\$53,107.00</b>		<b>\$24,110.00</b>

\*There was one minor bid error by Northwest Asphalt that had no effect on the outcome of the bid.

# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
<b>SUBJECT:</b> <b>Ordinance 11-964, repealing and replacing in its entirety BDMC 2.58 to clarify the criteria under which a business license may be issued, the term of the license, and exemptions from the business license requirements.</b>	Agenda Date: August 18, 2011		AB11-054
	Department/Committee/Individual	Created	Reviewed
	Mayor Rebecca Olness		X
	City Administrator –		
	City Attorney –Chris Bacha		X
	City Clerk -- Brenda L. Martinez		X
	Finance – May Miller		X
	Public Works – Seth Boettcher		
	Economic Devel. – Andy Williamson		
	Police – Jamey Kiblinger		
Court – Stephanie Metcalf			
Comm. Dev. – Amy Donlan	X		
<b>Attachments: Ordinance No. 11-964, Code redlined</b>			
<b>SUMMARY STATEMENT:</b>  Chapter 2.58 of the Black Diamond Municipal Code establishes the requirement for business to obtain an annual business license from the City. Currently the business license term is set on the calendar year and there is no pro-rating allowance for a business that starts in the second half of the year. In addition, section 2.58.025 gives criteria for exemptions but the language is vague on how to track short term business operation inside the City limits. There are also some minor changes that are required in the criteria for denying a business license and the appeal process that is available to the applicant.  The recommended amendments to the business license code will provide clear criteria to suspend, revoke or deny a business license as well as the proper appeal procedures. The amendments will also provide the City a better mechanism to track short term business activity inside City limits and provide a pro-rated fee for businesses not operating a full calendar year inside the City.			
<b>COMMITTEE REVIEW AND RECOMMENDATION:</b> Finance Committee reviewed the proposed changes and recommended moving it forward to Council for adoption.			
<b>RECOMMENDED ACTION:</b> <b>MOTION to adopt Ordinance 11-964, repealing and replacing in its entirety Chapter 2.58 of the Black Diamond Municipal Code to clarify the criteria under which a business may be issued, the term of the license, and exemptions from the business license requirements.</b>			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	
August 18, 2011			

# CITY OF BLACK DIAMOND WASHINGTON

## ORDINANCE NO. 11-964

---

**AN ORDINANCE OF THE CITY OF BLACK  
DIAMOND, WASHINGTON, AMENDING CHAPTER  
2.58, BUSINESS LICENSES, BY REPEALING AND  
REPLACING IN ITS ENTIRETY CHAPTER 2.58;  
PROVIDING FOR SEVERABILITY; AND  
ESTABLISHING AN EFFECTIVE DATE**

WHEREAS, the City Council of the City of Black Diamond desires to amend and update numerous provisions related to the issuance and processing of business licenses:

NOW, THEREFORE, the City Council of the City of Black Diamond, Washington, do ordain as follows:

Section 1. BDMC Chapter 2.58, Business Licenses, Repealed and Replaced. Black Diamond Municipal Code Chapter 2.58, Business Licenses, is hereby amended by Repealing the current Chapter 2.58 and replacing the same in its entirety with a new Chapter 2.58 to read as follows:

### **Chapter 2.58 BUSINESS LICENSES**

#### **Sections:**

- 2.58.010 Business license required.
- 2.58.020 Definitions.
- 2.58.025 Exemptions.
- 2.58.030 Eligibility for license.
- 2.58.040 Application procedure – Issuance – Term of License – Renewal – Replacement.
- 2.58.050 License fees.
- 2.58.060 Separate license required for each business location – Display of license.
- 2.58.070 Change in ownership or death of licensee.
- 2.58.080 Enforcement.
- 2.58.090 Grounds for revocation, suspension, or denial.
- 2.58.100 Appeal of suspension, revocation, or denial.
- 2.58.110 Service of notice.
- 2.58.120 Violations-- Penalties.

#### **2.58.010 - Business license required.**

No person shall engage in any business in the city without having first obtained from the city, a valid business license to conduct that business. This license shall be in addition to any other licenses or permits required by any other section of the Black Diamond Municipal Code.

**2.58.020 - Definitions.**

For purposes of this chapter, the following terms, phrases and words shall have the meanings specified in this section. Words used in the singular include the plural, and words used in the plural include the singular. Words used in the masculine gender include the feminine, and words used in the feminine gender include the masculine.

- A. "Business" means all activities, occupations, pursuits or professions located and/or engaged in within the city, with the object of gain, benefit or advantage to the person engaging in the same, or to any other person or class, directly or indirectly. Each business location shall be deemed a separate business. It also includes, but is not limited to, general contractors, subcontractors, home occupations, rentals, mobile home parks and businesses temporarily conducted within the city, including but not limited to traveling salespersons.
- B. "City" means the City of Black Diamond.
- C. "Clerk" means, for the purposes of this chapter, such city employees or agents as the mayor shall designate to administer this chapter, or any designee thereof. "Employee" means anyone employed by a person engaged in business within the city regardless of the amount of wage paid or the number of hours worked. It shall include the owner or owners of the business if they perform any work within the city.
- D. "Engaging in business" means:
  - (1) The term "engaging in business" means commencing, conducting, or continuing in business, and also the exercise of corporate or franchise powers, as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business.
  - (2) The following sections set forth examples of activities that constitute engaging in business in the city, and establish safe harbors for certain activities so that a person who meets the criteria may engage in de minimus business activities in the city without having to register and obtain a business license under this chapter. The activities listed in this section are illustrative only and are not intended to narrow the definition of "engaging in business" in subsection (1) of this definition. If an activity is not listed, whether it constitutes engaging in business in the city shall be determined by considering all the facts and circumstances and applicable laws.
  - (3) Without being all inclusive, any one of the following activities conducted within the city by a person, or its employee, agent, representative,

independent contractor, broker, or another acting on its behalf, constitutes engaging in business and requires a person to register and obtain a business license under this chapter:

- a. Owning, renting, leasing, maintaining, or having the right to use, or using, tangible personal property, intangible personal property, or real property permanently or temporarily located in the city;
- b. Owning, renting, leasing, using, or maintaining, an office, place of business, or other establishment in the city;
- c. Soliciting sales;
- d. Making repairs or providing maintenance or service to real or tangible personal property, including warranty work and property maintenance;
- e. Providing technical assistance or service, including quality control, product inspections, warranty work, or similar services on or in connection with tangible personal property sold by the person or on its behalf;
- f. Installing, constructing, or supervising installation or construction of, real or tangible personal property;
- g. Soliciting, negotiating, or approving franchise, license, or other similar agreements;
- h. Collecting current or delinquent accounts;
- i. Picking up and transporting tangible personal property, solid waste, construction debris, or excavated materials;
- j. Providing disinfecting and pest control services, employment and labor pool services, home nursing care, janitorial services, appraising, landscape architectural services, security system services, surveying, and real estate services including the listing of homes and managing real property;
- k. Rendering professional services such as those provided by accountants, architects, attorneys, auctioneers, consultants, engineers, professional athletes, barbers, baseball clubs and other sports organizations, chemists, consultants, psychologists, court reporters, dentists, doctors, detectives, laboratory operators, teachers, veterinarians;
- l. Meeting with customers or potential customers, even when no sales or orders are solicited at the meetings;
- m. Training or recruiting agents, representatives, independent contractors, brokers or others, domiciled or operating on a job in the city, acting on its behalf, or for customers or potential customers;
- n. Investigating, resolving, or otherwise assisting in resolving customer complaints;
- o. In-store stocking or manipulating products or goods, sold to and owned by a customer, regardless of where sale and delivery of the goods took place;

- p. Delivering goods in vehicles owned, rented, leased, used, or maintained by the person or another acting on its behalf;
- q. Accepting or executing a contract with the city, irrespective of whether goods or services are delivered within or without the city, or whether the person's office or place of business is within or without the city.

(4) If a person, or its employee, agent, representative, independent contractor, broker or another, acting on the person's behalf, engages in no other activities in or with the city but the following, it need not register and obtain a business license under this chapter:

- a. Meeting with suppliers of goods and services as a customer;
- b. Meeting with government representatives in their official capacity, other than those performing contracting or purchasing functions;
- c. Attending meetings, such as board meetings, retreats, seminars, and conferences, or other meetings wherein the person does not provide training in connection with tangible personal property sold by the person or on its behalf;
- d. Renting tangible or intangible property as a customer when the property is not used in the city;
- e. Attending, but not participating in a "trade show" or "multiple vendor events." Persons participating at a trade show shall review the city's trade show or multiple vendor event ordinances;
- f. Conducting advertising through the mail;
- g. Soliciting sales by phone from a location outside the city; and
- h. Delivering goods in the city by a common carrier with no offices located within the city limits.

(5) A seller located outside the city merely delivering goods into the city by means of common carrier is not required to register and obtain a business license under this chapter, provided that it engages in no other business activities in the city. Such activities do not include those in subsection 4 of this definition.

(6) The city expressly intends that engaging in business include any activity sufficient to establish nexus for purposes of applying the tax under the law and the constitutions of the United States and the state of Washington. Nexus is presumed to continue as long as the taxpayer benefits from the activity that constituted the original nexus generating contact or subsequent contacts.

E. "License" means and includes the word permit.

F. "Licensee" means the holder of any license issued in accordance with the provisions of this chapter.

- G. "Person" means any individual, partnership, firm, company, society, association, club or other group or organization acting by themselves or by a servant, agent or employee.
- H. "Premises" means all lands, structures and places, and also any personal property which is either fixed to, or is otherwise used in connection with any such business conducted on such premises.
- I. "Year" means a calendar year.

**2.58.025 - Exemptions.**

The following shall be exempt from the provisions of this chapter:

- A. Minors engaged in babysitting, delivery of newspapers, lawn mowing, car washing, and similar activities.
- B. Any instrumentality of the United States, State of Washington, or any political subdivision thereof, with respect to the exercise of governmental functions.
- C. All special event organizers or vendors operating at any authorized special event so long as each vendor is registered with the Event Coordinator and has a valid State Business License.
- D. Nonprofit organizations, including but not limited to religious, civic, charitable, benevolent, nonprofit, and cultural or youth organizations.
- E. Any farmer, gardener, or other person who sells, delivers or peddles any fruits, vegetables, berries or any farm produce or edibles raised, gathered, or produced by such person within the state.
- F. Any individual in possession of a valid direct retail endorsement, as established in RCW 77.65.510, to sell, deliver, or peddle any legally harvested retail-eligible species, as that term is defined in RCW 77.08.010, that is caught, harvested, or collected under rule of the department of fish and wildlife by such a person at a temporary food service establishment, as that term is defined in RCW 69.06.045.
- G. Businesses subject to the city's utility tax, Chapter 5.08.

**2.58.030 - Eligibility for license.**

- A. No person shall be eligible for a City of Black Diamond business license if any of the following conditions apply:
  - (1) The applicant is under the age of eighteen.

- (2) The type of business to be conducted under the license is prohibited by zoning or other regulations from being conducted at the location indicated on the license application.
- (3) The applicant knowingly provided false or materially misleading information on the business license application or during the application process.
- (4) The applicant is not eligible under any other statute, law, ordinance, or regulation to be licensed to conduct the type of business for which the city license would be issued.
- (5) At the time of making the application, the applicant's eligibility for the type of license sought is revoked or suspended pursuant to this chapter.
- (6) The applicant, or a business within the city which is owned in whole or part by the applicant, owes to the City of Black Diamond any unpaid license fees and/or unpaid fines imposed for violations of this chapter.

**2.58.040 - Application procedure – Issuance – Term of License – Renewal – Replacement.**

A. Application.

- (1) Every person required to obtain a license under the provisions of this chapter shall submit an application for such license to the permit center on a form provided by the city. The applicant is required to provide all information requested on said form, and failure to do so shall be grounds for refusing to issue the business license.
- (2) An application for a business license shall be accompanied by the full amount of the fee chargeable for said license, and said fee shall be nonrefundable. The clerk shall issue a receipt to the applicant for all fees paid.

B. Issuance.

- (1) A business license shall be issued only upon payment of all required license fees, review of the application and approval by the clerk.
- (2) Every license issued shall contain the year of issue, the name and location of the business and any other information the city shall deem necessary.
- (3) An issued license shall be immediately rendered invalid if payment of the required fees is made by a dishonored check, credit card, or any method that results in the city failing to receive proper payment.
- (4) No license issued under this chapter shall be transferable or assignable except as provided in Section 2.58.070.

- C. Term of license. A business license issued pursuant to this chapter shall only be valid during the same calendar year in which it was issued and shall expire as of the 31st of December. Business license renewals must be obtained prior to the thirty-first day of January each year or shall be subject to monetary penalties. See subsection D, below.
- D. Renewal. Upon payment of all applicable fees or charges and verification by the applicant that the information on the renewal license is correct, the city shall renew any business license for the new calendar year, subject to the following conditions:
- (1) If a business renews its license after January 31st, it shall be subject to a monetary penalty in addition to the regular license fee specified in this chapter. No renewal license shall be issued until both the regular license fee and the penalty have been paid in full.
  - (2) A license shall not be renewed if, at the time of submitting the application, the license sought to be renewed is revoked or suspended pursuant to this chapter.
  - (3) A license shall not be renewed if the applicant, or a business within the city which is owned in whole or part by the applicant, owes the city any unpaid license fees and/or unpaid fines imposed for violations of this chapter.
- E. Temporary License. A 30 day license may be issued for businesses not located inside the City limits that are performing short term work, provided:
- (1) The business does not maintain an office or branch in the city and is not engaged in door to door sales or selling goods or services on the streets of the city but is merely performing a service at the request of a City of Black Diamond resident. Such services include, but are not limited to home repairs or the installation of appliances; provided, the person is not in business within the City for a consecutive period that exceeds 30 days; or.
  - (2) Casual or isolated sales made by persons who are not engaged in the ongoing business of selling the type of property involved, provided, the person is not in business within the City for a consecutive period to exceed 30 days.

A temporary license may be renewed one time upon payment of an additional fee per the adopted fee schedule.

- F. Replacement. A replacement license will be issued by the clerk to replace any license previously issued which has been lost, stolen, defaced or destroyed without willful conduct on the part of the licensee, upon the filing by the licensee of an affidavit attesting to that fact. A replacement fee will be due in accordance with the adopted fee schedule.

**2.58.050 - License fees.**

- A. Calculation of fee. The fee for a city business license shall be determined according to the formulas below and the current fee schedule adopted by the city.
  - (1) Renewals. For businesses renewing their license, the annual license fee shall be based on the current fee listed in the adopted fee schedule.
  - (2) New businesses. For a new business that has not yet been established the fee shall be determined based on the fee listed in the adopted fee schedule.
  - (3) Businesses located outside city. Any business that is located outside the city but furnishes or performs services within the city, and that is not exempt under Section 2.58.025, shall pay a license fee pursuant to the provisions of this Chapter and based on the adopted fee schedule.
- B. Penalty for late payment. In addition to any other penalties provided for in this chapter, any business which fails to make application for an original business license before commencing business within the City of Black Diamond, or fails to renew an existing license by January 31st, shall be subject to late fee penalties according to the currently adopted fee schedule.
- C. Reinstatement fee. Any license that has been suspended pursuant to this chapter shall not be reinstated until a fee equal to one-half of the annual licensing fee for that business has been paid and the period of suspension has ended.
- D. New business license applications received in the second half of the calendar year will be given a 50% reduction of the license fee.

**2.58.060 - Separate license required for each business location – Display of license.**

- A. Unless otherwise specifically provided herein, no license issued under this chapter shall entitle the license holder to maintain or conduct the business for which the license was issued at any other place or location than that stated in such license. If the place of business is changed from one location to another, the licensee shall return the license to the clerk, and a new license shall be issued for the new place of business, for a fee per the adopted fee schedule.
- B. A separate license is required for each branch establishment or location in the city where business is conducted or engaged in, as if such branch establishment or location were a separate business; provided, no separate license fee shall be imposed to obtain the license for such branch establishment or location.
- C. A person engaging in two or more businesses at the same location shall be required to obtain separate licenses for each business.
- D. All licenses issued pursuant to this chapter shall at all times be posted in a conspicuous place at the location of the business; provided, when the licensee has no established place of business and goes from place to place, then such license

must be carried on the person of such licensee while actually engaged in the licensed business.

**2.58.070 - Change in ownership or death of licensee.**

- A. Change in ownership. A new license shall be required to be obtained within thirty days of the occurrence of any of the following events:
  - (1) A business has been sold or otherwise transferred to an owner whose name does not appear on the existing license;
  - (2) A license has been issued to a business that is a partnership and the members of the partnership change;
  - (3) A sole proprietor incorporates;
  - (4) A corporation dissolves and the business is continued under a new corporation or other type of business entity. In each of these cases, the new owner(s) must submit a new application and pay all fees required.
- B. Death of licensee. Should a license holder become deceased before expiration of the license, his or her duly appointed administrator or executor may continue to engage in business under the existing license until the license expires.

**2.58.080 - Enforcement.**

- A. It is unlawful for any person, either directly or indirectly, to conduct any business for which a license is required without a license being first procured and kept in effect at all such times as required by this chapter.
- B. Any license fee due, but unpaid and delinquent under this chapter, and all penalties thereon, may be assigned to a collection agency as allowed by law or collected in a civil action, which remedy shall be in addition to any and all other existing remedies and penalties provided by the Black Diamond Municipal Code.
- C. The clerk, or his or her designee, shall have the power and authority to suspend or revoke any license issued under the provisions of this chapter. Notice of such revocation or suspension shall be in writing and shall inform the licensee of the grounds for said suspension or revocation, the length of the suspension or revocation, and the date such suspension or revocation shall begin and end. The notice shall also inform the licensee of the right to appeal, the deadline for filing such an appeal, and that failure to file a timely appeal shall waive all appeal rights. Notice shall be served upon the licensee by one of the methods described in Section 2.58.110. Unless an appeal is timely filed as provided in Section 2.58.100, the suspension or revocation of a business license shall take effect on the eleventh day after receipt of a notice of suspension or revocation, provided that a refusal to issue a license is effective immediately.
- D. It is unlawful for any person whose license has been revoked or suspended to keep the license issued to him in his possession or under his control, and the same

shall be immediately surrendered to the clerk. When revoked, the license shall be canceled, and when suspended, the license shall be retained by the clerk during the period of suspension. A licensee who continues to engage in the business for which the license has been revoked or suspended shall be deemed to be operating without a license and shall be subject to any or all penalties provided herein.

**2.58.090 - Grounds for revocation, suspension or denial.**

- A. In accordance with Section 2.58.080(C), the clerk may revoke, suspend, or deny any business license issued under the provisions of this chapter on any one or more of the following grounds:
- (1) The license was procured by fraud or by false representation of fact; or
  - (2) The licensee has violated or failed to comply with any of the provisions of this chapter; or
  - (3) Makes a misrepresentation or fails to disclose a material fact to the city related to any of the obligations set forth in this chapter
  - (4) The licensee's continued conduct of the business for which the license was issued will result in a substantial threat to the public health, safety or welfare by reason of any of the following:
    - a. The licensee, his employees or agents acting within the scope of their employment have been convicted of a crime which bears a direct relationship to the conduct of the business for which the license has been issued; or
    - b. The licensee, or his agents or employees while acting within the scope of their employment, have, in the conduct of the business for which the license has been issued, violated a law or ordinance relating to the public health, welfare or safety after receiving warning from the city; or
    - c. The conduct of the business for which the license was issued has resulted in the creation of a public nuisance, as defined by the Black Diamond Municipal Code or by state law; or
    - d. Is in violation of a zoning regulation of the city; or
    - e. Is indebted or obligated to the city for past due fees or taxes, excluding special assessments such as LID assessments.

**2.58.100 - Appeal of suspension, revocation or denial.**

- A. Request for appeal– Scheduling of hearing.
- (1) A licensee wishing to appeal a notice of suspension, revocation, or denial must file a written request to appeal along with an appeal filing fee with the city clerk. Such requests must be received by the city or be postmarked no later than fourteen days after the date the notice of suspension or revocation was mailed to the licensee. Telephone, facsimile, or email requests shall not satisfy the requirements of this section. Failure to follow the appeal procedures in this section shall preclude the licensee's right to

appeal. In addition to the appeal fee, the appellant shall be responsible for hearing examiner costs associated with the appeal. The request to appeal must be in writing, include the required appeal fee, and must contain the following:

- a. The name and address of the appellant;
- b. A statement identifying the determination of the clerk from which the appeal is taken;
- c. A statement setting forth the grounds upon which the appeal is taken and identifying specific errors the clerk is alleged to have made in making the determination; and
- d. A statement identifying the requested relief from the determination being appealed.

- (2) The city clerk shall set a date for a hearing before the city hearing examiner, which date shall be at least fourteen but not more than thirty days from the date the appeal is filed, provided, the hearing date may be rescheduled and additional time allowed upon request of a party or the hearing examiner for good cause shown or upon mutual agreement of the licensee and the city. At least ten days before said hearing, the city clerk shall cause licensee to be served with notice of the hearing as provided in Section 2.58.110. The notice shall set forth the date, time and place of the hearing.

B. Failure to appear— Default judgment. Failure of licensee to appear for the scheduled hearing after notice of the hearing has been served upon licensee in the manner provided for in this chapter shall result in a default judgment being entered by hearing examiner in favor of the city, affirming the original suspension or revocation action taken by the clerk and declaring the license revoked or suspended. All costs of the hearing not previously collected shall be assessed by hearing examiner against licensee as part of the default decision.

C. Hearing procedure— Decision.

- (1) Except as specifically supplemented by this chapter, the hearing shall be conducted according to Chapter 2.30 of the Black Diamond Municipal Code.
- (2) Within ten days of the conclusion of the hearing, the hearing examiner shall enter written findings of fact and conclusions of law and shall affirm, modify or reverse the suspension, revocation, or denial of the license. The decision of the hearing examiner may impose any reasonable terms as a requirement for continuance of the license. A copy of the hearing examiner's decision shall be mailed to the clerk and the appellant.

D. License in effect pending hearing decision. When a suspension or revocation has been properly appealed, the license shall remain in effect pending the hearing examiner's decision. Any interest and/or penalties, however, shall continue to

accrue on all unpaid amounts, notwithstanding the fact that an appeal has been filed.

- E. Burden of Proof. The appellant shall have the burden of proving by a preponderance of the evidence that the determination of the clerk is erroneous.
- F. A writ of review regarding the decision of the hearing examiner may be sought from King County superior court by the appellant or by the city. A proper request for a writ of review must be filed with the superior court within twenty (20) calendar days following the date that the decision of the hearing examiner was mailed to the parties. Review by the superior court shall be on, and shall be limited to, the record on appeal created before the hearing examiner. Filing with the court does not automatically stay the effect of the city's decision.
- G. License must be surrendered upon decision to suspend or revoke. If the hearing examiner's decision is to suspend or revoke the license, the licensee shall immediately surrender the license to the clerk on the next business day following receipt of the notice of the hearing examiner's or within five (5) days of the date the decision is mailed to the appellant, whichever occurs first.
- H. The Licensee will be required to pay any costs related to the preparation for and the conducting of a public hearing. Any public hearing fee due, but unpaid within 60 days from the close of hearing, may be assigned to a collection agency as allowed by law.

#### **2.58.110 - Service of notice.**

Any notices required by this chapter shall be served upon a party by personal service or sent by both regular first class mail and certified mail, return receipt requested, to the address of the licensee or applicant as shown on the last business license, or if no such license or address is available, as shown in the other records of the city, or if no such address is shown, to such address as the clerk is able to ascertain by reasonable effort, or by posting at the location of the business if service by registered mail and two attempts at personal service have failed. Upon a showing by the city that notice has been attempted as provided for in this section, failure of the licensee or applicant to receive such notice shall not release the licensee or applicant from any fees or penalties that result, nor shall such failure extend any time limit set by the provisions of this chapter.

#### **2.58.120 - Violations– Penalties.**

- A. Any person who operates a business in the City of Black Diamond without a valid business license shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine in any sum not exceeding one

thousand dollars or by imprisonment in jail for a period not exceeding ninety days, or both such fine and imprisonment.

- B. **Civil Penalties.** Any person who fails to comply with the provisions of this chapter is, in addition to any criminal penalties, subject to a maximum civil penalty of two hundred fifty dollars for each day or portion of the day that the violation continues.
- C. **Other Legal Remedies.** Nothing in this chapter limits the right of the city to pursue other lawful, criminal, civil or equitable remedies to abate, discontinue, correct or discourage unlawful acts under or in violation of this chapter.

Section 2. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 3. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

**ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 18TH DAY OF AUGUST, 2011.**

CITY OF BLACK  
DIAMOND

---

Rebecca Olness, Mayor

ATTEST/AUTHENTICATED:

---

Brenda L. Martinez, City Clerk

Approved as to form:

---

Chris D. Bacha,  
Kenyon Disend PLLC  
City Attorney

Filed with the City Clerk:  
Passed by the City Council:  
Ordinance No.  
Date of Publication:  
Effective Date:

**Chapter 2.58**  
**BUSINESS LICENSES**

Sections:

2.58.010 Business license required.

2.58.020 Definitions.

2.58.025 Exemptions.

2.58.030 Eligibility for license.

2.58.040 Application procedure– Issuance– Term of License– Renewal– Replacement.

2.58.050 License fees.

2.58.060 Separate license required for each business location– Display of license.

2.58.070 Change in ownership or death of licensee.

2.58.080 Enforcement.

2.58.090 Grounds for revocation or suspension.

2.58.100 Appeal of suspension, ~~or~~ revocation, or denial.

2.58.110 Service of notice.

2.58.120 Violations– Penalties.

**2.58.010 Business license required.**

No person shall engage in any business in the city without having first obtained from the ~~City or their designee city administrator~~ a valid business license to conduct that business. This license shall be in addition to any other licenses or permits required by any other section of the Black Diamond Municipal Code.

(Ord. 530 § 2 (part), 1995)

**2.58.020 Definitions.**

For purposes of this chapter, the following terms, phrases and words shall have the meanings specified in this section. Words used in the singular include the plural, and words used in the plural include the singular. Words used in the masculine gender include the feminine, and words used in the feminine gender include the masculine.

"Business" means all activities, occupations, pursuits or professions located and/or engaged in within the city, with the object of gain, benefit or advantage to the person engaging in the same, or to any other person or class, directly or indirectly. Each business location shall be deemed a separate business. It also includes, but is not limited to, general contractors, subcontractors, home occupations, rentals, mobile home parks and businesses temporarily conducted within the city including but not limited to traveling salespersons.

"City" means the City of Black Diamond.

"Mayor" means, for the purposes of this Chapter, the person duly elected or appointed to act as the Mayor of the City of Black Diamond. The Mayor may designate someone to act on behalf of the Mayor for all purposes of this Chapter.

"Employee" means anyone employed by a person engaged in business within the city regardless of the amount of wage paid or the number of hours worked. It shall include the owner or owners of the business if they perform any work within the city.

"Engaging in business" means:

1. The term "engaging in business" means commencing, conducting, or continuing in business, and also the exercise of corporate or franchise powers, as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business.
2. ~~This section-~~The following sections sets forth examples of activities that constitute engaging in business in the city, and establishes safe harbors for certain activities so that a person who meets the criteria may engage in de minimus business activities in the city without having to register and obtain a business license under this chapter. The activities listed in this section are illustrative only and are not intended to narrow the definition of "engaging in business" in subsection 1 of this definition. If an activity is not listed, whether it constitutes engaging in business in the city shall be determined by considering all the facts and circumstances and applicable law.
3. Without being all inclusive, any one of the following activities conducted within the city by a person, or its employee, agent, representative, independent contractor, broker, or another acting on its behalf, constitutes engaging in business and requires a person to register and obtain a business license under this chapter:
  - a. Owning, renting, leasing, maintaining, or having the right to use, or using, tangible personal property, intangible personal property, or real property permanently or temporarily located in the city;

- b. Owning, renting, leasing, using, or maintaining, an office, place of business, or other establishment in the city;
- c. Soliciting sales;
- d. Making repairs or providing maintenance or service to real or tangible personal property, including warranty work and property maintenance;
- e. Providing technical assistance or service, including quality control, product inspections, warranty work, or similar services on or in connection with tangible personal property sold by the person or on its behalf;
- f. Installing, constructing, or supervising installation or construction of, real or tangible personal property;
- g. Soliciting, negotiating, or approving franchise, license, or other similar agreements;
- h. Collecting current or delinquent accounts;
- i. Picking up and transporting tangible personal property, solid waste, construction debris, or excavated materials;
- j. Providing disinfecting and pest control services, employment and labor pool services, home nursing care, janitorial services, appraising, landscape architectural services, security system services, surveying, and real estate services including the listing of homes and managing real property;
- k. Rendering professional services such as those provided by accountants, architects, attorneys, auctioneers, consultants, engineers, professional athletes, barbers, baseball clubs and other sports organizations, chemists, consultants, psychologists, court reporters, dentists, doctors, detectives, laboratory operators, teachers, veterinarians;
- l. Meeting with customers or potential customers, even when no sales or orders are solicited at the meetings;
- m. Training or recruiting agents, representatives, independent contractors, brokers or others, domiciled or operating on a job in the city, acting on its behalf, or for customers or potential customers;
- n. Investigating, resolving, or otherwise assisting in resolving customer complaints;

o. In-store stocking or manipulating products or goods, sold to and owned by a customer, regardless of where sale and delivery of the goods took place;

p. Delivering goods in vehicles owned, rented, leased, used, or maintained by the person or another acting on its behalf;

q. Accepting or executing a contract with the city, irrespective of whether goods or services are delivered within or without the city, or whether the person's office or place of business is within or without the city.

4. If a person, or its employee, agent, representative, independent contractor, broker or another, acting on the person's behalf, engages in no other activities in or with the city but the following, it need not register and obtain a business license under this chapter:

a. Meeting with suppliers of goods and services as a customer;

b. Meeting with government representatives in their official capacity, other than those performing contracting or purchasing functions;

c. Attending meetings, such as board meetings, retreats, seminars, and conferences, or other meetings wherein the person does not provide training in connection with tangible personal property sold by the person or on its behalf;

d. Renting tangible or intangible property as a customer when the property is not used in the city;

e. Attending, but not participating in a "trade show" or "multiple vendor events." Persons participating at a trade show shall review the city's trade show or multiple vendor event ordinances;

f. Conducting advertising through the mail;

g. Soliciting sales by phone from a location outside the city; and

h. Delivering goods in the city by a common carrier with no offices located within the city limits.

5. A seller located outside the city merely delivering goods into the city by means of common carrier is not required to register and obtain a business license under this chapter, provided that it engages in no other business activities in the city. Such activities do not include those in subsection 4 of this definition.

6. The city expressly intends that engaging in business include any activity sufficient to establish nexus for purposes of applying the tax under the law and the constitutions of the United States and the state of Washington. Nexus is presumed to continue as long as the taxpayer benefits from the activity that constituted the original nexus generating contact or subsequent contacts.

"License" means and includes the word permit.

"Licensee" means the holder of any license issued in accordance with the provisions of this chapter.

"Person" means any individual, partnership, firm, company, society, association, club or other group or organization acting by themselves or by a servant, agent or employee.

"Premises" means all lands, structures and places, and also any personal property which is either fixed to, or is otherwise used in connection with any such business conducted on such premises.

"Year" means a calendar year.

(Ord. 848 §§ 1, 2, 2007; Ord. 530 § 2 (part), 1995)

### **2.58.025 Exemptions.**

The following shall be exempt from the provisions of this chapter:

~~A. Businesses that do not maintain an office or branch in the City of Black Diamond and who are not engaged in door to door sales or selling goods or services on the streets of the city and are merely performing a service at the request of a Black Diamond resident, including but not limited to home repairs or the installation of appliances, provided, the person performing the service must possess any other licenses or certifications required under state or federal laws and the service provider is providing services in Black Diamond on no more than four occasions in any one calendar year.~~

~~B. Casual or isolated sales made by persons who are not engaged in the ongoing business of selling the type of property involved, providing that not more than four such sales events are made during any tax year.~~

AC. Minors engaged in babysitting, delivery of newspapers, lawn mowing, car washing, and similar activities.

BD. Any instrumentality of the United States, State of Washington, or any political subdivision thereof, with respect to the exercise of governmental functions.

~~E. All special event organizers or vendors operating at any city sponsored or authorized special event so long as each vendor is registered with the Event Coordinator and has a valid State Business License sponsored by the city, but not to include participating commercial vendors.~~

F. Nonprofit organizations, including but not limited to religious, civic, charitable, benevolent, nonprofit, cultural or youth organizations.

D. Any farmer, gardener, or other person who sells, delivers or peddles any fruits, vegetables, berries or any farm produce or edibles raised, gathered, or produced by such person within the state.

E. Any individual in possession of a valid direct retail endorsement, as established in RCW 77.65.510, to sell, deliver, or peddle any legally harvested retail-eligible species, as that term is defined in RCW 77.08.010, that is caught, harvested, or collected under rule of the department of fish and wildlife by such a person at a temporary food service establishment, as that term is defined in RCW 69.06.045.

~~DFG. Businesses subject to the city's utility tax, Chapter 5.08.~~

(Ord. 848 § 3, 2007)

(Ord. No. 893, § 2, 1-15-2009)

### **2.58.030 Eligibility for license.**

No person shall be eligible for a City of Black Diamond business license if any of the following conditions apply:

- (1) The applicant is under the age of eighteen.
- (2) The type of business to be conducted under the license is prohibited by zoning or other regulations from being conducted at the location indicated on the license application.
- (3) The applicant knowingly provided false or materially misleading information on the business license application or during the application process.
- (4) The applicant is not eligible under any other statute, law, ordinance, or regulation to be licensed to conduct the type of business for which the city license would be issued.
- (5) At the time of making the application, the applicant's eligibility for the type of license sought is revoked or suspended pursuant to this chapter.

(6) The applicant, or a business within the city which is owned in whole or part by the applicant, owes to the City of Black Diamond any unpaid license fees and/or unpaid fines imposed for violations of this chapter.

(Ord. 530 § 2 (part), 1995)

(Ord. No. 893, §§ 1, 2, 1-15-2009)

## **2.58.040 Application procedure– Issuance– Term of License– Renewal– Replacement.**

### **A. Application.**

(1) Every person required to obtain a license under the provisions of this chapter shall submit an application for such license to the ~~city clerk~~permit center on a form provided by the city. The applicant is required to provide all information requested on said form, and failure to do so shall be grounds for refusing to issue the business license.

(2) An application for a business license shall be accompanied by the full amount of the fee chargeable for said license, and said fee shall be nonrefundable. The ~~city administrator~~mayor shall issue a receipt to the applicant for all fees paid.

### **B. Issuance.**

(1) A business license shall be issued only upon payment of all required license fees, review of the application and approval by the ~~city administrator~~mayor or their designee.

(2) Every license issued shall contain the year of issue, the name and location of the business and any other information the city shall deem necessary.

(3) An issued license shall be immediately rendered invalid if payment of the required fees is made by a dishonored check, credit card, or any method that results in the city failing to receive proper payment.

(4) No license issued under this chapter shall be transferable or assignable except as provided in Section 2.58.070.

C. Term of license. A business license issued pursuant to this chapter shall only be valid during the same calendar year in which it was issued and shall expire as of the 31st of December. Business license renewals must be obtained prior to the thirty-first day of January each year or shall be subject to monetary penalties. See subsection D, below.

D. Renewal. Upon payment of all applicable fees or charges and verification by the applicant that the information on the renewal license is correct, the city shall renew any business license for the new calendar year, subject to the following conditions:

(1) If a business renews its license after January 31st, it shall be subject to a monetary penalty in addition to the regular license fee specified in this chapter. No renewal license shall be issued until both the regular license fee and the penalty have been paid in full.

(2) A license shall not be renewed if, at the time of submitting the application, the license sought to be renewed is revoked or suspended pursuant to this chapter.

(3) A license shall not be renewed if the applicant, or a business within the city which is owned in whole or part by the applicant, owes the City of Black Diamond any unpaid license fees and/or unpaid fines imposed for violations of this chapter.

E. Temporary License. A 30 day license for businesses not located inside the City limits which that are performing short term work, provided:-

(1) Businesses that do not maintain an office or branch in the City of Black Diamond and who are not engaged in door to door sales or selling goods or services on the streets of the city and are merely performing a service at the request of a Black Diamond resident. Such services including but not limited to home repairs or the installation of appliances.; provided, the person is not in business within the City for a consecutive period that exceeds 30 days; or, in business within the City for a consecutive period not to exceed 30 days, may obtain a temporary business license upon application to the City Administrator Mayor or his/her designee.

(2) Casual or isolated sales made by persons who are not engaged in the ongoing business of selling the type of property involved, provided, the person is not in business within the City for a consecutive period not to exceed 30 days. may obtain a temporary business license upon application to the City Administrator Mayor or his/her designee.

A temporary license may be renewed one time upon payment of an additional fee per the adopted fee schedule.

~~FF.~~ Replacement. A replacement license shall be issued by the city administrator mayor or their designee to replace any license previously issued which has been lost, stolen, defaced or destroyed without willful conduct on the part of the licensee, upon the filing by the licensee of an affidavit attesting to that fact, and the payment of a twenty-five-dollar fee to the city administrator. Recommend that all fees be taken out of the ordinance and placed in the fee schedule. A replacement fee will be due in accordance with the adopted fee schedule.

(Ord. 530-§ 2 (part), 1995)

(Ord. No. 893, §§ 1, 3, 1-15-2009)

## **2.58.050 License fees.**

A. Calculation of fee. The fee for a city business license shall be determined according to the formulas below and the current fee schedule adopted by the city.

(1) Renewals. For businesses renewing their license, the annual license fee shall be based on the current fee listed in the adopted fee schedule. ~~how many persons were employed by the business at any one time between January 1 and December 31 of the year immediately preceding the year for which the license is sought. The number of employees shall be provided by the employer.~~

(2) New businesses. For a new business that has not yet been established ~~or has not yet reported employee information to the state,~~ the fee shall be determined based on the business owner's estimate of the maximum number of employees likely to be employed during that calendar year ~~fee listed in the adopted fee schedule.~~

(3) Businesses located outside city. Any business that is located outside the city but furnishes or performs services within the city, and that is not exempt under Section 2.58.025(A), shall pay a license fee based on the adopted fee schedule. ~~measured by the number of employees of such business that perform any part of their duties within the city.~~

B. Penalty for late payment. In addition to any other penalties provided for in this chapter, any business which fails to make application for an original business license ~~after~~ before commencing business within the City of Black Diamond, or fails to renew an existing license by January 31st, shall be subject to ~~the following late fee penalties based on the number of days delinquent:~~ according to the currently adopted fee schedule.

Days Delinquent	Penalty
Up to one month	\$10.00
One month to two months	20.00
Two months to three months	30.00
Three months or more	Twice the cost of the license renewal and this amount may be sent to a collection agency if unpaid after thirty days' notice

C. Reinstatement fee. Any license that has been suspended pursuant to this chapter shall not be reinstated until a fee equal to one-half of the annual licensing fee for that business has been paid and the period of suspension has ended.

D. New business license applications received in the last quarter- second half of the calendar year will be given a 50% reduction of the license fee.

(Ord. 848 § 4, 2007; Ord. 530 § 2 (part), 1995)

(Ord. No. 893, §§ 1, 4, 1-15-2009)

**2.58.060 Separate license required for each business location– Display of license.**

A. Unless otherwise specifically provided herein, no license issued under this chapter shall entitle the license holder to maintain or conduct the business for which the license was issued at any other place or location than that stated in such license. If the place of business is changed from one location to another, the licensee shall return the license to the ~~city administrator~~ mayor or their designee, and a new license shall be issued for the new place of business, ~~free of charge~~ for a fee per the adopted fee schedule.

B. A separate license is required for each branch establishment or location in the city where business is conducted or engaged in, as if such branch establishment or location were a separate business; provided, no separate license fee shall be imposed to obtain the license for such branch establishment or location.

C. A person engaging in two or more businesses at the same location shall be required to obtain separate licenses for each business.

D. All licenses issued pursuant to this chapter shall at all times be posted in a conspicuous place at the location of the business; provided, when the licensee has no established place of business and goes from place to place, then such license must be carried on the person of such licensee while actually engaged in the licensed business.

(Ord. 530 § 2 (part), 1995)

(Ord. No. 893, §§ 1, 5, 1-15-2009)

**2.58.070 Change in ownership or death of licensee.**

A. Change in ownership. A new license shall be required to be obtained within thirty days of the occurrence of any of the following events:

(1) A business has been sold or otherwise transferred to an owner whose name does not appear on the existing license;

(2) A license has been issued to a business that is a partnership and the members of the partnership change;

(3) A sole proprietor incorporates;

(4) A corporation dissolves and the business is continued under a new corporation or other type of business entity. In each of these cases, the new owner(s) must submit a new application and pay all fees required.

B. Death of licensee. Should a license holder become deceased before expiration of the license, his or her duly appointed administrator or executor may continue to engage in business under the existing license until the license expires.

(Ord. 848 § 5, 2007; Ord. 530 § 2 (part), 1995)

(Ord. No. 893, §§ 1, 6, 1-15-2009)

#### **2.58.080 Enforcement.**

A. It is unlawful for any person, either directly or indirectly, to conduct any business for which a license is required without a license being first procured and kept in effect at all such times as required by this chapter.

B. Any license fee due, but unpaid and delinquent under this chapter, and all penalties thereon, may be assigned to a collection agency as allowed by law or collected in a civil action, which remedy shall be in addition to any and all other existing remedies and penalties provided by the Black Diamond Municipal Code.

C. ~~The city administrator~~ mayor, or his or her designee, shall have the power and authority to suspend or revoke any license issued under the provisions of this chapter. Notice of such revocation or suspension shall be in writing and shall inform the licensee of the grounds for said suspension or revocation, the length of the suspension or revocation, and the date such suspension or revocation shall begin and end. The notice shall also inform the licensee of the right to appeal, the deadline for filing such an appeal, and that failure to file a timely appeal shall waive all appeal rights. Notice shall be served upon the licensee by one of the methods described in Section 2.58.110. Unless an appeal is timely filed as provided in Section 2.58.100, the suspension or revocation of a business license shall take effect on the eleventh day after receipt of a notice of suspension or revocation, provided that a refusal to issue a license is effective immediately.

D. It is unlawful for any person whose license has been revoked or suspended to keep the license issued to him in his possession or under his control, and the same shall be immediately surrendered to the ~~city administrator~~ mayor. When revoked, the license shall be canceled, and when suspended, the license shall be retained by the ~~city administrator~~ mayor during the period of suspension. A licensee who continues to engage in the business for which the license has been revoked or suspended shall be deemed to be operating without a license and shall be subject to any or all penalties provided herein.

(Ord. 530 § 2 (part), 1995)

(Ord. No. 893, §§ 1, 7, 1-15-2009)

#### **2.58.090 Grounds for revocation, ~~or suspension~~ or denial.**

In accordance with Section 2.58.080(C), the The city administrator ~~may~~ or their designee may revoke, or suspend, or deny any business license issued under the provisions of this chapter on any one or more of the following grounds:

A. The license was procured by fraud or by false representation of fact; or

B. The licensee has violated or failed to comply with any of the provisions of this chapter; or

C. Makes a misrepresentation or fails to disclose a material fact to the city related to any of the obligations set forth in this chapter

D. The licensee's continued conduct of the business for which the license was issued will result in a substantial threat to the public health, safety or welfare by reason of any of the following:

1. The licensee, his employees or agents acting within the scope of their employment have been convicted of a crime which bears a direct relationship to the conduct of the business for which the license has been issued; or

2. The licensee, or his agents or employees while acting within the scope of their employment, have, in the conduct of the business for which the license has been issued, violated a law or ordinance relating to the public health, welfare or safety after receiving warning from the city; or

3. The conduct of the business for which the license was issued has resulted in the creation of a public nuisance, as defined by the Black Diamond Municipal Code or by state law.

4. Is in violation of a zoning regulation of the city; or

5. Is indebted or obligated to the city for past due fees or taxes, excluding special assessments such as LID assessments.

(Ord. 530 § 2 (part), 1995)

(Ord. No. 893, § 8, 1-15-2009)

### **2.58.100 Appeal of suspension, or revocation or denial.**

A. Request for appeal– Scheduling of hearing.

(1) A licensee wishing to appeal a notice of suspension, or revocation, or denial must file a written request to appeal along with an ~~nd~~ submit a appeal filing fee with the city clerk. Such requests must be received by the city or be postmarked no later than ten-fourteen days after the date of service of the notice of suspension or revocation was mailed to the

licensee. Telephone, facsimile, or email requests shall not satisfy the requirements of this section. Failure to follow the appeal procedures in this section shall preclude the licensee's right to appeal. -In addition to the appeal fee, the appellant shall be responsible for hearing examiner costs associated with the appeal. The request to appeal must be in writing, include the required appeal fee, -and must contain the following:

specify the grounds upon which the appeal is based.

a. The name and address of the appellant;

b. A statement identifying the determination of the [REDACTED] from which the appeal is taken;

c. A statement setting forth the grounds upon which the appeal is taken and identifying specific errors the [REDACTED] is alleged to have made in making the determination; and

d. A statement identifying the requested relief from the determination being appealed.

(2) The city clerk shall set a date for a hearing before the city hearing examiner, which date shall be at least fourteen but not more than thirty days from the date the appeal is filed, provided, the hearing date may be rescheduled and additional time allowed upon request of a party or the hearing examiner for good cause shown or upon mutual agreement of the licensee and the city. At least ten days before said hearing, the city clerk shall cause licensee to be served with notice of the hearing as provided in Section 2.58.110. The notice shall set forth the date, time and place of the hearing.

B. Failure to appear— Default judgment. Failure of licensee to appear for the scheduled hearing after notice of the hearing has been served upon licensee in the manner provided for in this chapter shall result in a default judgment being entered by hearing examiner in favor of the city, affirming the original suspension or revocation action taken by the city administrator/mayor and declaring the license revoked or suspended. At the city's request All the costs of the hearing shall be assessed by hearing examiner against licensee as part of the default decision.

C. Hearing procedure— Decision.

(1) Except as specifically supplemented by this chapter, the hearing shall be conducted according to Chapter 2.30 of the Black Diamond Municipal Code.

(2) Within ten days of the conclusion of the hearing, the hearing examiner shall enter written findings of fact and conclusions of law and shall affirm, modify or reverse the suspension, ~~or~~ revocation, or denial of the license. The decision of the hearing examiner

may impose any reasonable terms as a requirement for continuance of the license. A copy of the hearing examiner's decision shall be served upon mailed to the ~~mayor~~ and the licensee-appellant by the methods allowed under Section 2.58.110.

D. License in effect pending hearing decision. When a suspension or revocation has been properly appealed, the license shall remain in effect pending the hearing examiner's decision. Any interest and/or penalties, however, shall continue to accrue on all unpaid amounts, notwithstanding the fact that an appeal has been filed.

E. Burden of Proof. The appellant shall have the burden of proving by a preponderance of the evidence that the determination of the ~~mayor~~ is erroneous.

F. A writ of review regarding the decision of the hearing examiner may be sought from King County superior court by the appellant or by the city. A proper request for a writ of review must be filed with the superior court within twenty (20) calendar days following the date that the decision of the hearing examiner was mailed to the parties. Review by the superior court shall be on, and shall be limited to, the record on appeal created before the hearing examiner. Filing with the court does not automatically stay the effect of the city's decision.

~~EG. License must be surrendered upon decision to suspend or revoke. If the hearing examiner's decision is to suspend or revoke the license, the licensee shall immediately surrender the license to the city administrator ~~or their designee~~ on the next business day following receipt of the notice of the hearing examiner's or within five (5) days of the date the decision is mailed to the appellant, whichever occurs first. city council's determination. Let's have this be a hearing examiner decision, keep it less political that way.~~

(Ord. 530 § 2 (part), 1995)

~~FH. The Licensee will be required to pay any costs related to the preparation for and the conducting of a public hearing. Any public hearing fee due, but unpaid within 60 days from the close of hearing, may be assigned to a collection agency as allowed by law.~~

(Ord. No. 893, § 9, 1-15-2009)

### **2.58.110 Service of notice.**

Any notices required by this chapter shall be served upon a party by personal service or sent by both regular first class mail and certified mail, return receipt requested, to the address of the licensee or applicant as shown on the last business license, or if no such license or address is available, as shown in the other records of the city administrator, or if no such address is shown, to such address as the city administrator/mayor is able to ascertain by reasonable effort, or by posting at the location of the business if service by registered mail and two attempts at personal service have failed. Upon a showing by the city that notice has been attempted as provided for in this section, failure of the licensee

or applicant to receive such notice shall not release the licensee or applicant from any fees or penalties that result, nor shall such failure extend any time limit set by the provisions of this chapter.

~~(Ord. 530 § 2 (part), 1995)~~

~~(Ord. No. 893, §§ 1, 10, 1-15-2009)~~

### **2.58.120 Violations– Penalties.**

A. Any person who operates a business in the City of Black Diamond without a valid business license shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine in any sum not exceeding one thousand dollars or by imprisonment in jail for a period not exceeding ninety days, or both such fine and imprisonment.

B. Civil Penalties. Any person who fails to comply with the provisions of this chapter is, in addition to any criminal penalties, subject to a maximum civil penalty of two hundred fifty dollars for each day or portion of the day that the violation continues.

C. Other Legal Remedies. Nothing in this chapter limits the right of the city to pursue other lawful, criminal, civil or equitable remedies to abate, discontinue, correct or discourage unlawful acts under or in violation of this chapter.

~~(Ord. 848 § 6, 2007; Ord. 530 § 2 (part), 1995)~~

~~(Ord. No. 893, § 1, 1-15-2009)~~