



**CITY OF BLACK DIAMOND**  
**June 5, 2012 Workstudy Agenda (Revised)**  
25510 Lawson St., Black Diamond, Washington

Workstudies are meetings for Council to review upcoming and pertinent business of the City. Public testimony is only accepted at the discretion of the Council.

**4:45 P.M. – CALL TO ORDER, ROLL CALL**

- 1.) Fire Impact Fee - Mr. Bacha, Mr. Young and Mr. Williamson
- 2.) Adjournment

# CITY OF BLACK DIAMOND

WASHINGTON

ORDINANCE NO. \_\_\_\_

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**AN ORDINANCE OF THE CITY OF BLACK DIAMOND,  
WASHINGTON, RELATING TO DEVELOPMENT  
IMPACT FEES; PROVIDING FOR AMENDMENTS  
UPDATING CHAPTER 3.50 OF THE BLACK DIAMOND  
MUNICIPAL CODE; IMPLEMENTING A FIRE IMPACT  
FEE; PROVIDING FOR SEVERABILITY; AND  
ESTABLISHING AN EFFECTIVE DATE**

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WHEREAS, state law, pursuant to RCW Chapter 82.02, authorizes code cities to implement development impact fees for transportation, parks, schools and fire protection system improvements that are reasonably related to the new development, that do not exceed a proportionate share of the costs of system improvements that are reasonably related to and will benefit the new development; and

WHEREAS, in 1995 the City Council, pursuant to Ordinance No. 580, adopted a development impact mitigation code in conformance with RCW Chapter 82.02; and

WHEREAS, the development impact mitigation code has not been updated since its adoption to conform to changes in state law; and

WHEREAS, the City Council has not yet adopted development impact fees as authorized by state law; and

WHEREAS, the current population of the City of Black Diamond is approximately 4200 persons and the City anticipates substantial growth and new development which will impact the City's fire protection service; and

WHEREAS, anticipate growth and new development will necessitate capital investment for fire protection facilities needed to serve new development; and

WHEREAS, in 2010 the City Council authorized and commissioned a fire impact fee protection facilities study, completed in January of 2011 (the "2011 Fire Impact Fee Study"), for the purpose of establishing the rates for development impact fees for fire protection facilities in the City of Black Diamond using methodology authorized by and in compliance with Washington Law and City Code; and

WHEREAS, the 2011 Fire Impact Fee Study sets forth the methodology, the data, the adjustment for benefit to current city development, and the calculations used to establish impact fees for fire protection facilities; and

WHEREAS, the City Council has reviewed the 2011 Fire Impact Fee Study, conducted a work study session related to the methodology, data and calculations used to establish impact fees for fire protection facilities, and held a public hearing on the \_\_\_\_ day of \_\_\_\_\_, 2012 to receive public testimony regarding this ordinance, the 2011 Fire Impact Fee Study, and the proposed impact fees for fire protection facilities; and

WHEREAS, the City Council having been in all matters fully advised, finds that the proposed impact fees for fire protection facilities as set forth herein are reasonably related to new development, do not exceed a proportionate share of the costs of system improvements that are reasonably related to and will benefit new development; and

WHEREAS, the City Council finds that it is in the interest of the public health, safety and welfare to amend the Development Impact Mitigation Code to update the Code and to implement impact fees for fire protection facilities as set forth herein;

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

Section 1. Amendment of BDMC Ch. 3.50 (Development Impact Mitigation Code).  
Chapter 3.50 of the Black Diamond Municipal Code is hereby amended (shown in legislative revisions marks) to read as follows:

3.50.010 - Title.

This chapter shall be known as the "Black Diamond development impact mitigation code" and may be cited as such.

3.50.020 - Purpose.

It is the purpose of this chapter to:

A. Ensure that adequate facilities are available to serve new growth and development;

B. Promote orderly growth and development by requiring that new development pay a proportionate share of the cost of new facilities needed to serve growth; and in order to promote sound financial management practices in the operation of city government the council finds that the cost of having governmental officials review and process land use proposals should be borne by the land developer and not the taxpayers in general; and whereas, the land developer is entitled to some certainty in knowing what approvals are required for ~~hera~~ development proposal, the estimated time

in obtaining those approvals, and the government officials that will be accountable for each aspect of the approval; and

C. Ensure that impact fees are imposed through established procedures and criteria so that specific developments do not pay arbitrary fees or duplicate fees for the same impact.

### 3.50.040 - Definitions.

As used in this chapter:

"Applicant" means the person, firm, company, partnership, or corporation, and all successor's in interest thereto, proposing a development in the city.

**Comment [cdb1]:** Added to be more inclusive of the types of entities that exist

"Building permit" for purposes of this Chapter means the permit required for new construction and additions pursuant to Chapter 15.04 BDMC. The term "building permit," as used herein, shall not be deemed to include:

**Comment [cdb2]:** This was added for clarification.

1. Permits required for the remodeling, rehabilitation or other improvements to an existing structure or rebuilding a damaged or destroyed structure, provided there is no increase in the square footage space (for non-residential construction) or number of dwelling units (for residential construction) resulting therefrom;
2. Permits required for temporary dwellings;
3. Permits required for placement of a mobile home within an approved mobile home park.

**Comment [cdb3]:** This exemption assumes that an increase in square footage for existing, or replacement of damaged or destroyed, residential construction will not create additional demand as long as no new dwelling units are created. Thus, a remodel or expansion that includes an ADU or otherwise adds another dwelling unit would be subject to impact fees; however, if no new dwelling unit is created, residential improvements are exempt from impact fees. It may be better to move these "exemptions" to the exemption section of the code

"Capital improvement plan" means the capital facilities plan element of the city's comprehensive plan adopted pursuant to the provisions of RCW 36.70A.070 and that contains the elements identified in RCW 82.02.050 and that is in effect at the time the impact fee is imposed.

**Comment [cdb4]:** Some cities include placement of mobile homes as development subject to payment of impact fees. Current code provides an exemption.

"City" means the city of Black Diamond.

"Development" means any proposed land use, zoning or rezoning, comprehensive plan amendment, annexation, subdivision, short subdivision, planned unit development, planned area development, building permit, binding site plan or any other property development action permitted or regulated by this code.

"Development activity" means any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any changes in the use of land, that creates additional demand and need for public facilities; but does not include buildings or structures constructed by a regional transit authority.

**Comment [cdb5]:** This is the state law definition of "Development Activity" and thus should be incorporated into the City Code. Note that it includes any expansion of a building or structure that creates additional demand. The definition of building permit under current code exempts from impact fees those construction activities that do not add additional dwelling units, or for non-residential, additional square footage. This assumes no new demand is created.



"Development approval" means any written authorization from the development approval authority which authorizes the commencement of development activity.

**Comment [cdb6]:** This is the state law definition of "Development approval" and thus should be incorporated into the City Code.

"Development approval authority" means the city official or tribunal having code authority to approve a development activity.

"Dwelling Unit" shall have the same meaning as that term is given pursuant to Chapter 18.100 of the Black Diamond Municipal Code as now, or may hereafter be amended.

**Comment [cdb7]:** Fire impact fees for residential development are based upon dwelling unit. This definition incorporates the definition found in the zoning code which is as follows: A building or portion thereof designed exclusively for residential purposes providing complete housekeeping services for one family.

"Fire Impact Fee Study" shall mean and refer to the fire protection facility impact fee rate study prepared by Henderson Young & Company and dated on or about January 13, 2011, on file with the office of the City Clerk, and such future Fire Impact Fee Study as may be commissioned by the City and adopted by the City Council to establish fire protection facility impact fees.

Note: Under this definition, an ADU is likely to be considered a separate Dwelling unit triggering payment of impact fees.

"Fire protection facilities" means fire trucks and apparatus, and fire stations, and any furnishings and equipment that are used with fire trucks and apparatus or fire stations and which can be capitalized.

**Comment [cdb8]:** Added a definition of fire impact fee study.

"Fire protection project improvements" means site improvements and facilities that are planned and designed to provide service for a particular development or users of the project and are not fire protection system improvements. No fire protection improvement or facility included in a capital improvement plan approved by the council shall be considered a fire protection project improvement.

"Fire protection system improvements" means fire protection facilities that are included in the capital improvement plan and are designed to provide service to service areas within the community at large, in contrast to fire protection project improvements.

**Comment [KDP9]:** These definitions are added (taken from Auburn Code, circa 2011) to provide definitions for the new Fire Impact Fees and are consistent with state law.

"Impact" means any effect on public facilities or services attributable or directly related to the proposed development.

"Impact fee" means the fee or charge levied pursuant to this chapter as a condition of issuance of a building permit or development approval and which mitigates all or any portion of an impact. Impact fee does not include a reasonable permit or application fee.

**Comment [cdb10]:** This was added for clarification.

"Low-income housing" means housing with a monthly housing expense, that is no greater than thirty percent of eighty percent of the median family income adjusted for family size, for the county where the project is located, as reported by the United States department of housing and urban development.

**Comment [KDP11]:** This definition is taken from EHB 1398 which amended RCW 82.02.060 which allows exemptions for certain projects. The legislature added low-income exemptions and this new definition which needs to be in the City Code.

"Mitigation" or "mitigate" means an action which avoids any negative or adverse impact, or which ameliorates any such impact.



"Non-Residential" or "Non-Residential Development" means any and all types of construction that do not constitute Residential Construction or residential Development.

**Comment [cdb12]:** Added because Fire Impact Fees are based upon two classes of construction, residential and non-residential.

"Owner" means the owner of record of real property, although when real property is being purchased under a real estate contract, the purchaser shall be considered the owner of the real property if the contract is recorded.

**Comment [cdb13]:** This term is added because it is used in the code but is not currently undefined. This definition conforms to state law. RCW 82.02.090.

"Project improvements" means site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project, and are not system improvements. No improvement or facility included in the capital improvement plan shall be considered a project improvement.

"Proportionate share" means that portion of the cost of public facility improvements that are reasonably related to the service demands and needs of new development.

**Comment [cdb14]:** This term is added because it is used in the code but is not currently undefined. This definition is taken from state law.

"Public facilities" means any city-owned, operated or contracted facility or service, in whole or in part, whether existing or planned, including but not limited to parks, utilities, recreational facilities, schools, libraries, playgrounds, streets, transportation facilities, open spaces, police, fire or garbage services, buildings and all such facilities or services, including related equipment.

"Residential" or "Residential Development" means all types of construction intended for human habitation. This shall include, but is not limited to, single-family, duplex, triplex, and other multifamily residential development.

**Comment [cdb15]:** Added because Fire Impact Fees are based upon two classes of construction, residential and non-residential. This definition is taken from the Sequim 2009 impact fee ordinance.

"Service area" means a geographical area in which a defined set of public facilities provides services to developments within the area. Service areas may be separately described for each type of public facility.

"System improvements" means public facilities that are included in the capital improvement plan and are designed to provide service to service areas within the community at large, in contrast to project improvements.

### 3.50.050 - Applicability of impact fee.

A. This chapter shall be applied as part of and integrated into the city's land use and development approval procedures, so that mitigation decisions under this chapter are incorporated into development approval and permitting decisions at the earliest stage, thus permitting public review and comment.

B. This chapter shall be uniformly applicable to development activity that occurs within a designated service area.

C. Mitigation conditions imposed pursuant to this chapter shall be deemed conditions of the development permit and may be enforced by any suitable means.

3.50.060 - Identification of development impacts.

A. Impact Identification Required. Before a development is given approval or is allowed to proceed, the city shall identify all impacts of the development, if any.

B. Impact Criteria. The city shall consider, but not be limited to, the following items in identifying or quantifying an impact, to the extent the items are applicable to the development.

1. The provisions of this code, the capital improvement plan, or any other adopted city plan;
2. Technical documents which discuss or analyze public facilities or services or adopted city plans;
3. Pre-development versus post-development demands upon public facilities and services;
4. Impact of the development on the size, number, capacity, condition, availability, proximity or other characteristics of public facilities and services;
5. Likelihood that an impact from a development, when aggregated with impacts of future development in the immediate vicinity, will require mitigation due to its cumulative effect;
6. Nature, quantity, cost, identified completion date, if any, and pro rata share if applicable, of contributions, improvements or dedications to public facilities and services, including those offered or suggested by the applicant;
7. Likelihood that the development will benefit from or use public facilities and services;
8. Existing or planned alternatives for financing capital improvements;
9. Whether the development furthers the public health, safety and general welfare;
10. Likelihood of city growth through annexation of areas adjacent to the development;
11. Whether impacts have been previously mitigated, in whole or in part;

12. Any other criteria useful for identifying and quantifying impacts deemed relevant by the city;

13. The cost of system improvements previously incurred by the city to the extent that the proposed growth and development is served by the previously constructed improvements.

C. Identification Cost. The cost of any special investigation, analysis or report necessary for the identification of impacts related to any development shall be borne by the applicant.

#### 3.50.070 - Mitigation review/Alternatives.

A. Mitigation of Impacts Required. The city shall not give development approval unless satisfactory provisions have been made to mitigate identified impacts and such provisions meet the policies and goals of this chapter and of the city's development regulations.

B. Review. The city shall review the identified impacts and any proposed alternatives for mitigating such impacts to determine whether the policies and goals of this chapter and of the city's development regulations can be met.

C. Mitigation Alternatives. The following alternatives or any combination, either on-site or off-site, may be used as necessary to mitigate or avoid identified impacts. The list is not exhaustive and does not purport to describe all available and viable alternatives. Other alternatives may be used as necessary to achieve the policies and goals of this chapter and of the city's development regulations.

1. Modification of the development activity so that identified impacts are avoided;
2. Dedication of land to the city for public purposes;
3. Contributions or payments offered by the applicant for use in mitigating on-site or off-site impacts as authorized under RCW 82.02.020. Contributions pursuant to RCW 82.02.020 shall not be required as a condition of development approval and shall be subject to the limitations of RCW 82.02.020 as now existing or hereafter amended; provided, however, that persons entitled to a refund and/or payment of interest may voluntarily and in writing waive their right to such refund or payment in whole, in part, or for a specified time period to facilitate completion of the designated improvement. No such waiver shall be required as a condition of development approval, but when made shall be recorded with the King



County department of records and shall be binding upon subsequent owners;

4. Environmental mitigation agreements under the authority of RCW Chapter 43.21C and Chapter 19.04 of this code. Such agreements shall not fall within the purview of RCW 82.02.020 and shall be distinct from voluntary contribution agreements;
5. Impact fees assessed pursuant to this chapter. Such fees, if assessed, shall be used only to fund system improvements. Formulas for determining the amount of such fees will be adopted, from time to time, by ordinance of the city council;
6. Contractual arrangements between the applicant and the city permitting use by the general public of private facilities or services within the development;
7. Contractual arrangements between the applicant and the city whereby the applicant constructs, funds or commits to construct or fund public facilities and services which mitigate identified impacts;
8. Any contractual agreement, including but not limited to latecomers agreement, no protest agreement, maintenance agreement or funding agreement which mitigates any identified impact;
9. Any alternative offered by the applicant which is satisfactory to the city and has the effect of mitigating identified impacts;
10. If the city determines that identified impacts would be best mitigated on a regional basis, the city may independently or in conjunction with any other jurisdiction prepare or have prepared a cost estimate and define a benefit area for the regional improvement. The fair share of the total costs to be allocated to the proposed development shall then be determined.

3.50.080 - Imposition of impact fee.

A. No building permit shall be issued for a development activity in a designated service area as herein defined unless the impact fee is calculated, imposed and collected pursuant to this chapter.

B.

1. For single-family/duplex residential subdivisions and short subdivisions hereinafter approved, the per lot impact fee shall be calculated and assessed at the time of final plat or short plat approval, noted on the face of the final plat, and collected on a per lot basis at the time of building

permit application; provided, however, if an improvement for which an impact fee is being collected must be constructed prior to occupancy of any phase of the development, then the impact fee for said improvement shall be paid at the time of assessment.

2. For new multifamily and nonresidential development hereinafter approved, the impact fee shall be calculated and assessed at the time of site plan approval and collected at the time of building permit application; provided, however, if an improvement for which an impact fee is being collected must be constructed for occupancy of any phase of the development, then the impact fee for said improvement shall be paid at the time of impact fee assessment. If the nature of the development activity is then not sufficiently defined, then calculation and assessment of the impact fee shall be deferred until the building permit application is submitted.
  3. Notwithstanding the foregoing, the fee shall be recalculated for building permit applications filed more than three years following the date of the applicable final plat approval, short plat approval or site plan approval, using the city regulations and capital facility and impact fees in effect at the time the building permit application is submitted.
  4. If a building permit for a model home is allowed prior to the time of final plat or short plat approval, then the ~~developer~~applicant shall pay the impact fee in effect at the time the model home building permit application is submitted.
- C. For development activity not necessitating or having previously been granted preliminary plat, preliminary short plat or site plan approval, the impact fees shall be calculated, assessed and collected at the time of building permit application.
- D. For development activity not necessitating a building permit, the impact fee shall be calculated, assessed and collected at the time of site plan approval.
- E. For mobile home parks, the impact fee shall be calculated, imposed and collected at the time of site plan approval, provided, if the mobile home park is approved for construction in phases, then the fee for the first phase shall be paid at the time of site plan approval, and the fee for each subsequent phase shall be paid prior to the issuance of permits for construction of improvements within that phase.
- F. Imposition of Fire Protection Facility Impact Fees. The City hereby imposes and shall collect fire protection facility impact fees, calculated in accordance with BDMC 3.50.100, on every applicant for a building permit within the service area, except as provided in BDMC 3.50.120 (Exemptions).

**Comment [cdb16]:** The term developer has been changed to applicant because applicant is a defined term in the Code and developer is not.

G. Any fire protection impact fee imposed shall be reasonably related to the impact caused by the new development and shall not exceed a proportionate share of the cost of fire protection facilities that are reasonably related to the new development.

H. The fire protection impact fee imposed may include costs for fire protection facility improvements previously incurred by the City to the extent that new development will be served by the previously constructed improvements; provided, that such fee shall not be imposed to correct any system improvement deficiencies.

I. The fire protection impact fee imposed for any development shall be calculated and determined by the procedures established by this chapter and based on the methods set forth in BDMC 3.50.100.

### 3.50.090 - Establishment of development service areas.

Service areas, which may vary by type of public facility, are to be established.

A. Such areas will provide a nexus between those paying the fees and receiving the benefits to ensure that those developments paying impact fees receive substantial benefits.

B. Service areas may be designated by the city council, by ordinance or through amendment to the capital improvement plan upon consideration of the following factors:

1. The comprehensive plan;
2. Standards for adequate public facilities incorporated in the capital improvement plan;
3. The projections for full development as permitted by land use ordinances and timing of development;
4. The need for funding unprogrammed capital improvements necessary to support projected development;
5. Such other factors as the city may deem relevant.

C. Fire Protection Service Area. The city hereby establishes, as the service area for fire protection facility impact fee, the corporate limits of the City of Black Diamond, including all property located within the corporate city limits. The scope of the Fire Protection Service Area is hereby found to be reasonable and established on the basis of sound planning and engineering principles, the factors set forth in BDMC 3.50.090(A) and (B), and is found to be consistent with RCW 82.02.060, as described in the Fire Impact Fee Study.



3.50.100 - Calculation of impact fee.

A. Formulas for determining the amount of the impact fees assessed under this chapter will be adopted, from time to time, by ordinance of the city council. The city council shall hold a public hearing before adopting or amending impact fee formulas.

B. If the development for which approval is sought contains a mix of use, the impact fee must be separately calculated for each type of use.

C. Upon application by the developer/applicant supported by studies and data, the impact fee may be reduced or eliminated if it is shown that either:

1. The formulas adopted by the city council do not accurately reflect the impact; or
2. Due to unusual circumstances:
  - a. Facility improvements identified for the applicable service are not reasonably related to the proposed development, or
  - b. Such facility improvements will not reasonably benefit the proposed development.

D. Prior to making an application for any development approval, an applicant, upon payment of the applicable fee, may request an impact fee determination, which determination shall be based upon information supplied by the applicant sufficient to permit calculation of the impact fee. The impact fee determination shall be binding upon the city for a period of six months unless there is a material change in either the development proposal or this chapter. The fee for a binding preapplication impact fee determination shall be not less than fifty dollars. The fee shall be the actual cost of making the determination, including all legal, administrative, engineering and planning fees, and shall be paid before the written determination is provided to the applicant.

E. Adoption of Fire Impact Fee Formula. The following fire protection facility impact fee formula shall be used to calculate base fire protection facility impact fees:

<u>Land Use</u>	<u>Fire Protection Impact Fee Formula</u>
<u>Residential</u>	<u>\$1,783.13 per dwelling unit</u>
<u>Non-Residential</u>	<u>\$2.29 per square foot</u>

**Comment [cdb17]:** This is formula set forth in table 4 of the 2011 fire impact fee study.

F. Calculation of Square Footage. Non-residential fire protection facility impact fees shall be based upon the total square footage, rounded to the nearest whole number, included within the gross leasable area of the development subject to impact fees



as measured by generally acceptable standards for measuring gross leasable area. For purposes of this section gross leasable area shall mean the total floor area designed for tenant occupancy and exclusive use, including any basements, mezzanines, or upper floors.

G. The base fire protection facility impact fee shall be adjusted from time to time as provided in BDMC 3.50.190.

### 3.50.120 - Impact fee exemptions.

A. Except as provided below, the following development activity shall be exempted from the payment of all impact fees imposed pursuant to this Chapter

1. Remodeling, rehabilitation or other improvements to an existing structure or rebuilding a damaged or destroyed structure; provided that, there is no increase in the square footage space (for non-residential construction) or the number of dwelling units (for residential construction) resulting therefrom.
2. Miscellaneous improvements which do not generate impact, including, but not limited to, fences, walls, residential swimming pools, and signs;
3. Demolition or moving of a structure;
4. Development Activity that meets the mitigation alternative requirements of BDMC 3.50.070.

B. The city council may exempt low-income housing, or designated development activities, with broad public purposes from any impact fees that would have been paid by such development activity; provided that such impact fees shall be ispaid from public funds other than the impact fee fund and, provided further that, a low-income housing exemption granted under this section shall be conditioned upon the requirement that the applicant record a covenant in the manner set forth in subsection B, below.

C. The City Council may also provide a full or partial exemption from impact fees for low-income housing in accordance with the following. The City Council may grant an exemption for low-income housing under this subsection (C) as follows

1. The City Council may grant a partial exemption of not more than eighty percent of impact fees, in which case there is no explicit requirement to pay the exempted portion of the fee from public funds other than impact fee accounts; or

**Comment [cdb18]:** This definition is suggested to clarify how square footage would be calculated. This example use gross leasable area as impacts to fire protection will likely be based upon space for occupancy rather than gross square footage. Thus, common areas not meant for occupancy are not included in calculation of square footage.

**Comment [cdb19]:** If the Council includes an inflationary adjustment, this language is intended to include such adjustment.

**Comment [cdb20]:** This language from the definition of building permit was added here to clarify that the described re-development activities are determined not to have impact and thus do not trigger payment of impact fees. This is consistent with current language in the City Code. The Council may want to consider additional restrictions such as the length of time between when the structure is damaged or destroyed and when it is rebuilt, or limitations upon the increase in size of the residential structure.

**Comment [cdb21]:** These are examples of exemptions found in the Auburn and Renton Municipal Codes that are not included in the current Black Diamond Code.

**Comment [cdb22]:** This exemption is added to recognize the mitigation alternatives set forth in BDMC 3.50.070 as an alternative to payment of impact fees.



2. The City Council may grant a full waiver, in which case the remaining percentage of the exempted fee must be paid from public funds other than impact fee accounts.

D. An exemption for low-income housing granted under subsection (B) of this section or this subsection (C) must be conditioned upon requiring the applicant to record a covenant that, except as provided otherwise by this subsection, prohibits using the property for any purpose other than for low-income housing. At a minimum, the covenant must address price restrictions and household income limits for the low-income housing, and that if the property is converted to a use other than for low-income housing, the property owner must pay the applicable impact fees in effect at the time of conversion. Covenants required by this subsection must be recorded with the applicable county auditor or recording officer.

E. The City, in granting an exemption under subsection (B) of this section or this subsection (C) for low-income housing, may not collect revenue lost through granting an exemption by increasing impact fees unrelated to the exemption.

F. A school district that receives school impact fees must approve any exemption under subsection (B) of this section or this subsection (C).

G. A person installing a residential fire sprinkler system in a single-family home shall not be required to pay the fire operations portion of the fire protection facility impact fee. The exempted fire operations impact fee shall not include the proportionate share related to the delivery of emergency medical services. For purposes of this chapter, fire sprinkler system shall have the same meaning as that term is given in RCW 18.60.010.

H. The development approval authority shall be authorized to determine whether a particular development activity falls within an exemption identified in this section. Such determinations shall be subject to the appeals procedures set forth in BDMC 3.50.140.

### 3.50.130 - Impact fee credits.

A. The ~~developer~~applicant shall be entitled to a credit against the applicable impact fee for the present value of any dedication of land, for improvement to or new construction of any system improvements provided by the ~~developer~~applicant (or the ~~developer~~applicant's predecessor in interest) to facilities that are/were identified in the capital improvement plan and that are required by the city as a condition of approval for the immediate development proposal, if such prior dedication, improvement or construction is located within the same service area as the immediate development proposal.

**Comment [cdb23]:** The above changes are part of amendments made to RCW 82.02.060 pursuant to EHB 1398 effective June 12, 2012.

**Comment [cdb24]:** The legislature added this exemption in 2011 at RCW 82.02.100(2).

**Comment [cdb25]:** Added to clarify that the development approval authority has the authority to make the determination whether or not an exemption applies and that such determination is subject to appeal.



B. The amount of the credit shall be determined at the time of building permit issuance (or site plan approval where no building permit is required). In the event the amount of the credit is calculated to be greater than the amount of the impact fee due, the ~~developer applicant~~ may apply such excess credit toward impact fees imposed on other developments within the same service area; provided, however if the improvement is one for which a latecomers agreement would be authorized, then the ~~developer applicant~~ shall only be entitled to a latecomers agreement. In any event the city shall not be responsible for payment to the ~~developer applicant~~ of any amount credited and not used.

### 3.50.140 - Appeals.

The determination of the development approval authority as to the applicability, ~~and/or the amount of and/or credit against, an impact fee shall be appealable as provided for in this section.~~

A. The determination of the development approval authority shall be appealable to the city council. Such appeal may be perfected by the proponent or any aggrieved party by giving notice to the city administrator within ten days of the decision being appealed. Review by the city council shall be on a de novo basis; provided, however, where the city council is the development approval authority the only appeal shall be to the King County Superior Court pursuant to the provisions of subsection D of this section.

B. The notice of appeal shall be made upon a form to be supplied by the city administrator. A nonrefundable fee of two hundred fifty dollars shall be paid at the time the notice of appeal is submitted. A hearing shall then be scheduled before the city council within thirty days of the filing of the notice of appeal and appeal fee.

C. The decision of the city council shall be in writing and shall include findings of fact and conclusions to support the decision.

~~D. The decision of the city council shall be final unless, within ten calendar days, a party of record files and serves upon all city and all affected parties, a petition for writ of review with the King County Superior Court. may be appealed to Superior Court by filing a land use petition meeting the requirements set forth in Chapter 36.70C RCW. The petition must be filed and served upon all necessary parties as set forth in state law and within the 21-day time period as set forth in RCW 36.70C.040. Requirements for fully exhausting City administrative appeal opportunities must be fulfilled.~~

E. An applicant may pay the impact fee under protest pending appeal to avoid delays in the issuance of building permits.

### 3.50.150 - Impact mitigation fee fund.

**Comment [cdb26]:** These changes were added to clarify that an applicant may appeal either the applicability of the impact fee (i.e. application of an exemption) or the amount of the impact fee or credit. Administrative appeals are required by state law to be set forth in the City Code. RCW 82.02.070(5).

**Comment [cdb27]:** A sample of other neighboring cities with impact fees indicates that all establish a right to appeal to the Hearing examiner: Renton – HX; Issaquah – HX; Maple Valley – HX; Covington – HX; Enumclaw – HX (unclear if an appeal of HX can be filed with City Council); Orting – HX; Auburn – HX; and, Bonney Lake – HX. The City Council may want to consider whether or not the de novo appeal to the City Council is the best approach to hearing appeals.

**Comment [cdb28]:** Appeals of the City Council decision must comply with LUPA, thus the current language has been modified to conform to state law. This language was taken from the Burien Municipal Code.

**Comment [cdb29]:** This was added to conform to state law which specifically allows payment under protest. RCW 82.02.070(4).



A. There is created a fund to be known as the "impact mitigation fee fund." The city clerk-treasurer shall establish separate accounts within such fund and maintain records for each such account whereby impact fees collected can be segregated by type of facility and by service area. All interest shall be retained in the account and expended for the purposes for which the impact fees were imposed.

B. By April of each year, the city clerk-treasurer shall provide a report for the previous calendar year on each impact fee account showing the source and amount of moneys collected, earned or received and system improvements that were financed in whole or in part by impact fees.

#### 3.50.160 - Expenditures.

Impact fees for system improvements shall be expended only in conformance with the capital improvement plan. Impact fees shall be expended or encumbered for a permissible use within ~~sixten~~ years of receipt, unless there exists an extraordinary and compelling reason for fees to be held longer than ~~sixten~~ years. Such extraordinary and compelling reasons shall be identified in written findings by the city council.

**Comment [cdb30]:** State law was amended to extent this time period to ten years.

#### 3.50.170 - Refunds.

A. The current owner of property in which an impact fee has been paid may receive a refund of such fee if the city fails to expend or encumber the impact fees within ~~sixten~~ years or when the fees were paid or such other period of time established pursuant to this section on public facilities intended to benefit the development activity for which the impact fees were paid. In determining whether impact fees have been encumbered, impact fees shall be considered encumbered on a first in, first out basis. The current owner likewise may receive a proportionate refund where the public funding of applicable service area projects by the end of such ~~sixten~~-year period has been insufficient to satisfy the ratio of public to private funding for such service area as established in the capital improvement plan. The city shall notify potential claimants by first class mail deposited with the United States Postal Service addressed to the last known address of claimants.

**Comment [KDP31]:** State law was amended to extent this time period to ten years.

**Comment [KDP32R31]:**

B. The request for refund money must be submitted to the city council in writing within one year of the date the right to claim a refund arises or the date the notice is given, whichever is later. Any impact fees that are not expended within these time limitations, and for which no application for refund has been made within this one-year period, shall be retained and expended on the indicated capital improvements. Refunds of impact fees under this subsection shall include interest earned on the impact fees.

C. An ~~developer~~ applicant may request and shall receive a refund, including interest earned on the impact fees, when the building permit for which the impact fee has been paid has lapsed for failure to commence construction.



3.50.180 - Impact fee as additional and supplemental requirement.

Nothing in this title shall preclude the city from requiring the applicant or the proponent of a development activity to mitigate adverse environmental impacts of a specific development pursuant to the State Environmental Policy Act, Chapter 43.21C RCW, based on the environmental documents accompanying the underlying development approval process, and/or Chapter 58.17 RCW, governing plats and subdivisions. Compliance with this chapter and/or payment of fees under this chapter shall not constitute evidence of a determination of transportation concurrency. The impact fee is additional and supplemental to, and not in substitution of, any other requirements imposed by the city on the development of land or the issuance of building permits; provided, that any other such city development regulation which would require the developer/applicant to undertake dedication or construction of a facility contained within the city capital improvement plan shall be imposed only if the developer/applicant is given a credit against impact fees as provided for in Section 3.50.130.

**Comment [cdb33]:** Added for clarification. This language is taken from the Renton Code.

3.50.190 – Review and Adjustment Of Rates.

(1. The fees and rates set forth in the Rate Study may be reviewed and adjusted by the city council as it deems necessary and appropriate in conjunction with the annual budget process so that adjustments, if any, will be effective at the first of the calendar year subsequent to budget period under review.

2. Annually, and prior to the first day of January, the director shall adjust the fees by the same percentage change as in the most recent annual change of the Construction Cost Index published in the Engineering News Record.)

*Or in the alternative*

(Fire impact fee rates shall be updated annually using the following procedures:

1. The Director shall use the Building Cost Index published by Engineering News Record to calculate annual inflation adjustments in the impact fee rates. The impact fees shall not be adjusted for inflation should the index remain unchanged.

2. The indexed impact fee rates shall be calculated in January, or as soon thereafter as the latest index information is published by Engineering News Record, and shall become effective immediately thereafter. A copy of the indexed impact fee rates shall be provided to the City Council but the indexed rates shall become effective without further Council review.

3. The City Council shall review the fire impact fee rates prior to December 31, 2010, and every 2 years thereafter, to determine whether or not a new fire impact fee rate study should be prepared. If this review does not occur, the City shall continue to collect

**Comment [cdb34]:** This new section is added to address annual increases in the impact fees. Adjustment language is not included in the existing code presumably because impact fees had not been previously imposed. This language is taken from the Renton Code.



impact fees at the rate in effect, but shall not index the fire impact fees for subsequent years until the required review by the City Council occurs.)

**Comment [cdb35]:** This is alternative language taken from the Issaquah impact fee code.

**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.

**Comment [cdb36]:** The City Council may want to identify a specific date in the future for implementation of the fire impact fees set forth in this ordinance.

**ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON**  
THE \_\_\_\_ DAY OF \_\_\_\_\_, 20 \_\_\_\_.

CITY OF BLACK DIAMOND

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

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
Brenda 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: