



CITY OF BLACK DIAMOND
February 5, 2015 Regular Business 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 360-886-5700. Thank you for attending.

EXECUTIVE SESSION: In accordance with RCW 42.30.110(1)(h) - To evaluate the qualifications of a candidate for appointment to the vacant Council position and also to discuss with legal Counsel potential litigation pursuant to RCW 42.30.110(1)(i) with possible action to follow.

PUBLIC HEARINGS:

APPOINTMENTS, PRESENTATIONS, ANNOUNCEMENTS:

Council Appointment of Council Position #4

Mayor Benson

Oath of Office for Newly Appointed Councilmember

Presentation – Police Department’s “Employee of the Trimester Award”

Chief Kiblinger

UNFINISHED BUSINESS:

NEW BUSINESS:

- | | |
|--|-------------------|
| 1) AB15-012 – Resolution Amending Council Rules of Procedure | Councilor Edelman |
| 2) AB15-013 – Resolution Authorizing Copier Lease | Ms. Miller |
| 3) AB15-014 – Resolution Approving Contract with RH2 for Water Comp Plan Assistance | Mr. Boettcher |
| 4) AB15-015 – Resolution Approving ILA with Covington and Maple Valley for Building Department Related Services | Mr. Nix |
| 5) AB15-016 – Ordinance Setting Vesting Period for Ordinance No. 14-1030 | Mr. Nix |
| 6) AB15-017 – Ordinance Regarding Recreational Marijuana Land-Uses in Black Diamond | Mr. Nix |
| 7) AB15-018 – Ordinance Regarding Medical Marijuana Land-Uses in Black Diamond | Mr. Nix |

DEPARTMENT REPORTS:

MAYOR’S REPORT:

- Retreat Planning

COUNCIL REPORTS:

- A. Council Standing Committees and Regional Committees

- Councilmember Deady - Cemetery and Parks Committee; Growth Management Planning Council (GMPC)
- Councilmember Morgan - Water Resource Inventory Area Committee (WRIA 9)
- Councilmember Edelman - Planning and Community Service Committee; Public Issues Committee (PIC)
- Councilmember Taylor, Chair - Public Works Committee; Public Safety Committee

ATTORNEY REPORT:

PUBLIC COMMENTS:

CONSENT AGENDA:

8) Claim Checks – February 5, 2015, No. 41844 through No.41922 (void No. 41653)in the amount of \$178,913.32

9) Minutes – Special Meeting of January 8, 2015, Council Meeting of January 15, 2015 and Special Meeting of January 22, 2015

ADJOURNMENT:

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: AB15-012 Resolution No. 15-1009, revising the Council's Rules of Procedure	Agenda Date: February 5, 2015	
	AB15-012	
	Mayor Carol Benson	
	City Administrator	
	City Attorney Carol Morris	
	City Clerk – Brenda L. Martinez	X
	Com Dev/Nat Res – Aaron Nix	
	Finance – May Miller	
	MDRT/Ec Dev – Andy Williamson	
Cost Impact (see also Fiscal Note): \$	Police – Chief Kiblinger	
Fund Source: --	Public Works – Seth Boettcher	
Timeline:	Court – Stephanie Metcalf	
Agenda Placement: ☐ Mayor ☒ Two Councilmembers ☐ Committee Chair ☐ City Administrator		
Attachments: Resolution No. 15-1009, Redlined and Clean Copy of Council Rules		
SUMMARY STATEMENT: Councilmember's Deady and Edelman are bringing forward this proposed resolution that would change the Council Rules regarding Town Hall meetings, order of the agenda, and the second public comment period. The proposed changes are as follows: • Town Hall meetings to held bi-monthly (Jan, Mar, May, July, Sept, Nov) • Change the order of the agenda so the Consent Agenda is at the beginning of the agenda following Announcements, Presentations, Appointments • Removing the second public comment from the order of the agenda If the proposed changes are adopted the next step would be to revise City code to reflect the change in the Town Hall meetings. This would occur at the February 19th Council meeting. FISCAL NOTE (Finance Department): N/A		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: The Budget, Finance, Administration Committee reviewed this at their January 29, 2015 meeting and recommend approval.		
RECOMMENDED ACTION: MOTION to adopt Resolution No. 15-1009, revising the Council Rules of Procedure.		
RECORD OF COUNCIL ACTION		
Meeting Date	Action	Vote
February 5, 2015		

RESOLUTION NO. 15-1009

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
REVISING THE CITY COUNCIL RULES OF PROCEDURE**

WHEREAS, the City Council of the City of Black Diamond adopted Resolution No. 14-948 adopting new Council Rules of Procedure; and

WHEREAS, the City Council wishes make revisions to the Council Rules of Procedure;

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

Section 1. The City Council hereby adopts the revised City Council Rules of Procedure as set forth in the attached Exhibit A.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 5TH DAY OF
FEBRUARY, 2015.**

CITY OF BLACK DIAMOND:

Carol Benson, Mayor

Attest:

Brenda L. Martinez, City Clerk



RULES OF PROCEDURE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON

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RULES OF PROCEDURE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON

SECTION 1 – AUTHORITY

In accordance with RCW 35A.12.120, the Black Diamond City Council hereby establishes the following rules for the conduct of Council meetings, proceedings and business. These rules shall take effect upon adoption by resolution of the Council and until such time as they are amended or new rules are adopted in the manner provided for by these rules.

References.

RCW 35A.12.100 (Duties and authority of the mayor — Veto — Tie-breaking vote): “The mayor shall be the chief executive and administrative officer of the city, in charge of all departments and employees, with authority to designate assistants and department heads. The mayor may appoint and remove a chief administrative officer or assistant administrative officer, if so provided by ordinance or charter.^[1] He or she shall see that all laws and ordinances are faithfully enforced and that law and order is maintained in the city, and shall have general supervision of the administration of city government and all city interests. All official bonds and bonds of contractors with the city shall be submitted to the mayor or such person as he or she may designate for approval or disapproval. He or she shall see that all contracts and agreements made with the city or for its use and benefit are faithfully kept and performed, and to this end he or she may cause any legal proceedings to be instituted and prosecuted in the name of the city, subject to approval by majority vote of all members of the council. The mayor shall preside over all meetings of the city council, when present, but shall have a vote only in the case of a tie in the votes of the councilmembers with respect to matters other than the passage of any ordinance, grant, or revocation of franchise or license, or any resolution for the payment of money. He or she shall report to the council concerning the affairs of the city and its financial and other needs, and shall make recommendations for council consideration and action. He or she shall prepare and submit to the council a proposed budget, as required by chapter 35A.33 RCW. The mayor shall have the power to veto ordinances passed by the council and submitted to him or her as provided in RCW 35A.12.130 but such veto may be overridden by the vote of a majority of all councilmembers plus one more vote. The mayor shall be the official and ceremonial head of the city and shall represent the city on ceremonial occasions, except that when illness or other duties prevent the mayor's attendance at an official function and no mayor pro tempore has been appointed by the council, a member of the council or some other suitable person may be designated by the mayor to represent the city on such occasion.”

¹ For reference, the City of Black Diamond does not operate under a city charter.

RCW 35A.11.020 (Powers vested in legislative bodies of noncharter and charter code cities): "The legislative body of each code city shall have power to organize and regulate its internal affairs within the provisions of this title and its charter, if any; and to define the functions, powers, and duties of its officers and employees; within the limitations imposed by vested rights, to fix the compensation and working conditions of such officers and employees and establish and maintain civil service, or merit systems, retirement and pension systems not in conflict with the provisions of this title or of existing charter provisions until changed by the people: PROVIDED, That nothing in this section or in this title shall permit any city, whether a code city or otherwise, to enact any provisions establishing or respecting a merit system or system of civil service for firefighters and police officers which does not substantially accomplish the same purpose as provided by general law in chapter 41.08 RCW for firefighters and chapter 41.12 RCW for police officers now or as hereafter amended, or enact any provision establishing or respecting a pension or retirement system for firefighters or police officers which provides different pensions or retirement benefits than are provided by general law for such classes.

Such body may adopt and enforce ordinances of all kinds relating to and regulating its local or municipal affairs and appropriate to the good government of the city, and may impose penalties of fine not exceeding five thousand dollars or imprisonment for any term not exceeding one year, or both, for the violation of such ordinances, constituting a misdemeanor or gross misdemeanor as provided therein. However, the punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime. Such a body alternatively may provide that violation of such ordinances constitutes a civil violation subject to monetary penalty, but no act which is a state crime may be made a civil violation.

The legislative body of each code city shall have all powers possible for a city or town to have under the Constitution of this state, and not specifically denied to code cities by law. By way of illustration and not in limitation, such powers may be exercised in regard to the acquisition, sale, ownership, improvement, maintenance, protection, restoration, regulation, use, leasing, disposition, vacation, abandonment or beautification of public ways, real property of all kinds, waterways, structures, or any other improvement or use of real or personal property, in regard to all aspects of collective bargaining as provided for and subject to the provisions of chapter 41.56 RCW, as now or hereafter amended, and in the rendering of local social, cultural, recreational, educational, governmental, or corporate services, including operating and supplying of utilities and municipal services commonly or conveniently rendered by cities or towns.

In addition and not in limitation, the legislative body of each code city shall have any authority ever given to any class of municipality or to all municipalities of this state before or after the enactment of this title, such authority to be exercised in the manner provided, if any, by the granting statute, when not in conflict with this title. Within constitutional limitations, legislative bodies of code cities shall have within their territorial limits all powers of taxation for local purposes except those which are expressly preempted by the state as provided in RCW 66.08.120, 82.36.440 [repealed], 48.14.020, and 48.14.080."

SECTION 2 – COUNCIL MEETINGS

- 2.1 Meetings Shall be Open to Public. All meetings of the City Council shall be open to the public and all persons shall be permitted to attend any meeting of this body, except as provided in Chapter 42.30 RCW (the Open Public Meetings Act). Under RCW 42.30.040, no person at the meeting shall be required to register or provide other information, to complete a questionnaire, or otherwise comply with any other conditions as a precondition to be allowed to attend. However, persons wishing to address the Council or otherwise present information to the Council during a Council meeting may be requested to register and identify themselves and their home address. Persons who disrupt a meeting of the Council may lose the right to be present for the remainder of the meeting. See *Section 2.10*.
- 2.2 Agenda. The City Clerk shall be responsible for preparing agendas for all City Council meetings that specify the time and place of the meeting and set forth a brief general description of each item to be considered by the Council. The agenda is subject to approval by the Mayor or the Mayor's designee.
- 2.3 Minutes. The City Clerk shall cause to be prepared action minutes of all of the Council meetings, which minutes shall contain an account of all official actions of the Council. Council meetings shall be electronically recorded and retained for the period of time as provided by State law. No changes shall be made to minutes except by motion approved by a majority of the Council at a properly noticed meeting.
- 2.4 Schedule of Regular Meetings. In accordance with BDMC 2.04.010, the regular meetings of the City Council shall be held on the first and third Thursdays of every month at 7:00 p.m. in the City Hall Council Chambers located at 25510 Lawson Street, Black Diamond, Washington. The regular meeting location may be changed by a majority vote of the City Council. Special Council Meetings will be held on the second Thursday of the month at 6:00 p. m. Town Hall meetings shall be held bi-monthly (Jan, Mar, May, July, Sept, Nov) on the second Thursday of the month every month at 7:00 p.m. following the Special Council Meeting in the City Hall Council Chambers located at 25510 Lawson Street, Black Diamond, Washington. The Town Hall Meeting will be adjourned by 9:00 p.m. unless otherwise amended by a majority vote of the Council.
- 2.5 Quorum Required. A quorum shall be required to transact Council business. The presence of a majority of the whole membership of the Council who are also eligible to vote at a Council meeting shall constitute a quorum. Should less than a quorum be present at the time of roll call, any Councilmember present may, upon belief that late arrival of one or more Councilmembers will enable a quorum to be created, make a motion that the Council meeting be recessed for up to one hour; should a quorum still be lacking at the end of the recess period, the

meeting shall be adjourned. As authorized under RCW 42.30.090, the City Clerk may adjourn the meeting if all Councilmembers are absent.

- 2.6 Holidays. Should a scheduled Council meeting fall on a legal holiday, the meeting shall be rescheduled to the next business day that is not a legal holiday or to another day certain by majority vote of Councilmembers present.
- 2.7 Study Sessions. Study sessions, or meetings to review upcoming and pertinent business of the City, may be scheduled as special meetings of the Council subject to the same notification procedures set forth below for special meetings.

Special Meetings. In accordance with chapter 42.30 RCW, a special meeting of the City Council may be called by the Mayor or at the request of any three (3) Councilmembers by written notice delivered to each Councilmember.

Emergency Meetings. In accordance with RCW 42.30.070 and .080, if, by reason of fire, flood, earthquake, or other emergency, there is a need for expedited action by the City Council to meet the emergency, the Presiding Officer of the Council may provide for a meeting site other than the regular meeting site and the public meeting notice requirements shall be suspended during the emergency.

- 2.8 Executive Sessions. An executive session is a Council meeting that is closed except to the Council, the Mayor, the City Administrator, the City Attorney and staff members or others authorized to attend by the Mayor or a majority of Councilmembers present. In accordance with RCW 42.30.030 and .110, other persons and members of the public are prohibited from attending executive sessions.

Executive sessions may be held during regular Council meetings, Special Council meetings, or Council Study Sessions. In addition, the Council may retire to hold an executive session during one of these meetings. When this occurs, the portions of the meeting that are not part of the executive session shall continue to be open to the public. Prior to convening an executive session, the Presiding Officer shall make an announcement that an executive session is being held and inform the public when the executive session shall end; provided that, the ending time of an executive session may be extended by announcement of the Presiding Officer. Executive sessions may only be called to consider such matters as authorized by RCW 42.30.110.

- 2.9 Cancellation of Meetings. The Mayor, or in the absence of the Mayor the Mayor Pro Tem, or any three members of Council may cancel a meeting and upon proper notice given by the City Clerk.
- 2.10 Disruption of Meetings. As authorized by RCW 42.30.050, should any Council meeting be interrupted by a person or group of persons so as to render the

orderly conduct of such meeting unfeasible, such person or persons causing the interruption may be ordered removed from the meeting and prohibited from returning to attend the remainder of the meeting. If necessary to restore order, the Council may order the meeting room cleared and continue in session or may adjourn the meeting and reconvene at another location selected by majority vote of the Councilmembers present. In such a session, final disposition may be taken only on matters that appear on the agenda. The Council shall allow any members of the public or representatives of the media who were not participating in the disturbance to attend any session that follows the disturbance, except an executive session, provided that the Council is not prohibited from establishing a procedure for readmitting individuals who were not responsible for disturbing the orderly conduct of the meeting.

SECTION 3 – REGULAR COUNCIL MEETING ORDER OF BUSINESS

- 3.1 Preparation of Council Agenda. All items to be included on the agenda for consideration at a Council meeting should be submitted to the City Clerk in full no later than 10:00 a.m. nine days prior to the scheduled Council meeting. Once the agenda has been finalized and provided to the Council, items added to the agenda may be declined to be considered by the Council at the meeting for which the agenda was prepared, until a future Council meeting date, which date shall be specified by the Council.

The form of agenda of a Regular City Council meeting shall be as follows:

- 3.2 Call to Order. The Presiding Officer shall call the meeting to order.
- 3.3 Flag Salute. The Presiding Officer shall lead the flag salute. However, the Presiding Officer may designate a Councilmember or other person to lead the flag salute.
- 3.4 Roll Call. The City Clerk will call the roll and determine whether quorum is satisfied. *See Subsection 2.5.*
- 3.5 Appointments, Announcements, Proclamations and Presentations.
- 3.5.1 *Appointments.* In accordance with the Black Diamond Municipal Code and these Rules of Procedure, individuals appointed by the Mayor to hold positions within City government or on various committees, boards and commissions may require confirmation by the Council. Where confirmation is required, the vote of the Council may be preceded by discussion in executive session. *See SECTION 17 and SECTION 18.*
- 3.5.2 *Announcements.* An announcement is a brief statement that informs the public of an event or happening of general interest. However, it cannot be a statement regarding a subject prohibited below *Subsection 3.5.4*

3.5.3 *Proclamations.* A proclamation is an official announcement made by the Mayor or the City Council regarding a non-controversial event, activity or special interest group which has had a major city-wide impact. The Mayor will read the proclamation and may invite guests to speak on the topic for no more than five (5) minutes.

3.5.4 *Presentations.* Any person(s) or organization(s) wishing to make a presentation to the Council must first submit a completed "Request to be on Council Agenda Form" with the City Clerk. The request should be made at least two weeks prior to the intended Council date. The Mayor or the Mayor's designee will determine if the proposed presentation is approved and will notify the applicant of the selected meeting date. If the presentation is not approved, the Mayor or the Mayor's designee will notify the applicant of the decision and the reason(s) for the decision. Presentations will not last more than five (5) minutes in length or unless at the request of the Mayor or Mayor's designee. Upon motion and approval of a majority of Councilmembers present, the Council may authorize presentations and may determine their length.

Prohibited Topics. Except as authorized or required by RCW 42.17A.555, no person may use this time to address the Council for the purpose of assisting a campaign for election of a person to any office or for the promotion of, or opposition to, any ballot proposition. Further, no person may use this time to address the Council for the purpose of advertising

3.6 Consent Agenda. Approval of the Consent Agenda, including items considered to be routine and non-controversial, may be approved by one motion. Any Councilmember may remove any item from the Consent Agenda for separate discussion and action. Items on the Consent Agenda include but are not limited to the following:

- a. Approval of minutes.
- b. Fixing dates for public hearings and appeals.
- c. Approval of claims, vouchers and payroll, bid awards and contracts.
- d. Approval of property as surplus.
- e. Authorization of grant applications.
- f. Approval of interlocal agreements.
- g. Other items designated by the City Council.

- | ~~3.6~~3.7 Public Comments. Members of the audience may comment on any matter related to City business during the Public Comment period. *See Section 10.*
- | ~~3.7~~3.8 Legislative Public Hearings. Individuals may comment on legislative decisions regarding matters of policy. *See SECTION 11.*
- | ~~3.8~~3.9 Quasi-judicial Hearings. More formal proceedings are held to determine the legal rights of specific parties, which include the receipt of proponent and opponent testimony. *See SECTION 11.*
- | ~~3.9~~3.10 Agenda Modifications. The Presiding Officer shall announce any changes to the Council's published agenda.
- | ~~3.10~~3.11 Unfinished Business. Unfinished business consists of subjects discussed by the Council at a previous regular or special meeting and which have been placed on the agenda for additional discussion or resolution.
- | ~~3.11~~3.12 New Business, Ordinances and Resolutions.
- | ~~3.11.1~~3.11.12.1 New Business. New business shall mean topics or issues that have not previously been before the City Council for discussion or other action, other than ordinances and resolutions.
- | ~~3.11.2~~3.11.12.2 Ordinances. Ordinances prescribe general, uniform, and permanent rules of conduct and constitute the local law of the City of Black Diamond. *See Subsection 9.1.*
- | ~~3.11.3~~3.11.12.3 Resolutions. Resolutions concern matters of special, temporary, or ministerial character and express the opinion or mind of the City Council. *See Subsection 9.2.*
- | ~~3.12~~3.13 Department Reports. Department Directors may report on action and activities of their respective departments.
- | ~~3.13~~3.14 Mayor's Report. The Mayor may report on significant activities since the last regular meeting, inquire on matters of general City business, or initiate investigation or action on a matter of concern.
- | ~~3.14~~3.15 Councilmember Reports. Councilmembers may report on Council committee discussions or other significant activities since the last regular meeting, or on matters of general City business, or may initiate investigation or action on a matter of concern.
- | ~~3.15~~3.16 City Attorney Report. The City Attorney may report on legally significant events or activities.

~~3.16 Public Comments. Members of the audience may request to comment on any issue discussed during the Council meeting. Comments will be allowed subject to the time limits and other restrictions in SECTION 10.~~

~~3.17 Consent Agenda. Approval of the Consent Agenda, including items considered to be routine and non-controversial, may be approved by one motion. Any Councilmember may remove any item from the Consent Agenda for separate discussion and action. Items on the Consent Agenda include but are not limited to the following:~~

~~a. Approval of minutes.~~

~~b. Fixing dates for public hearings and appeals.~~

~~c. Approval of claims, vouchers and payroll, bid awards and contracts.~~

~~d. Approval of property as surplus.~~

~~e. Authorization of grant applications.~~

~~f. Approval of interlocal agreements.~~

~~g. Other items designated by the City Council.~~

~~3.183.17 Executive Session. In accordance with RCW 42.30.030 and .110, executive sessions are closed to the general public. See Subsection 2.8.~~

~~3.193.18 Adjournment. With no further business to come before the Council, the Presiding Officer may adjourn the meeting.~~

~~3.203.19 Recess. The foregoing agenda may be interrupted for a stated time as called by the Presiding Officer to recess for any reason, including executive sessions.~~

~~3.213.20 Town Hall Meetings. Town Hall meetings are informal events that provide the City Council and members of the Black Diamond community an opportunity to discuss emerging issues and matters of local or general concern. See SECTION 12.~~

SECTION 4 – PRESIDING OFFICER

4.1 Who Shall Act as Presiding Officer.

4.1.1 The Mayor shall act as Presiding Officer at all meetings of the Council unless absent; in the absence of the Mayor, the Mayor Pro Tem will act as Presiding Officer. If both the Mayor and Mayor Pro Tem are absent and a

quorum is present, the Council shall elect one of its members to serve as Presiding Officer until the return of the Mayor or Mayor Pro Tem. See *SECTION 13*.

- 4.2 Duties of Presiding Officer. The duties of the Presiding Officer shall be to:
- 4.2.1 Preserve order and decorum at all meetings of the Council and cause the removal of any person from any meeting for disorderly conduct.
 - 4.2.2 Observe and enforce all rules adopted by the Council.
 - 4.2.3 Recognize Councilmembers in the order in which they request the floor, and recognize every Councilmember who wishes an opportunity to speak; provided that, the mover of a motion shall be permitted to debate it first; provided further that, the Presiding Officer may allow discussion of an issue prior to the stating of a motion when such discussion would facilitate wording of a motion.
- 4.3 Reordering Items on Agenda. Without the necessity of any vote thereon, Presiding Officer may present matters before the Council for discussion, consideration and voting in a different order than they appear in the agenda when matters on the agenda are able to be placed under more than one classification or category.
- 4.4 Limitations on Political Speech. Except where the Council is properly considering a motion regarding whether the City shall take an official position on a political issue in accordance with RCW 42.17A.555, no Black Diamond elected official shall use a Council meeting to express an opinion, in support of or in opposition to a candidate for public office or a ballot measure. See also *SECTION 19*.

SECTION 5 – COUNCILMEMBERS

- 5.1 Councilmember Attendance at Meetings.
- 5.1.1 Excused Absence. Councilmembers shall inform the Mayor or City Clerk in advance if the Councilmember will be unable to attend, or will be late to attend, any Council meeting. The Presiding Officer shall then announce during roll call that the Councilmember will be absent or late. Any absence following prior notice to the Mayor or City Clerk shall be noted in the minutes as an excused absence. Absence at a scheduled Council meeting due to sudden illness or emergency shall be noted in the minutes as an excused absence due to illness or emergency.
 - 5.1.2 Excessive Absence Shall Create Vacancy. In accordance with RCW 35A.12.060, a Councilmember's position shall be deemed vacant if

that Councilmember has three (3) consecutive unexcused absences from Regular Council meetings.

5.1.3 Telephonic or Other Electronic Attendance. Any Councilmember may attend any Council meeting by telephone, video conference, or other electronic means as long as all other persons present at the meeting can hear or otherwise understand all comments made and questions asked by the Councilmember and the Councilmember can hear or otherwise understand all comments made and questions asked by all other persons speaking at the meeting. The City Clerk shall reflect in the meeting minutes Councilmember attendance by telephone, video conference, or other electronic means.

5.2 Remarks. Councilmembers desiring to speak shall address the Presiding Officer and, when recognized, shall confine their remarks to matters currently under discussion, provided that a Councilmember may move to have a different matter considered by the Council, subject to these Rules of Procedure.

5.3 Questioning. Any Councilmember, including the Presiding Officer, shall have the right to question any individual, including members of the staff, on matters germane to the issue properly before the Council for discussion. Under no circumstances shall such questioning be conducted in a manner that would constitute a cross-examination of or an attempt to ridicule or degrade the individual being questioned.

5.4 Limitations on Political Speech. Except where the Council is properly considering a motion regarding whether the City shall take an official position on a political issue in accordance with RCW 42.17A.555, no Black Diamond elected official shall use a Council meeting as an occasion to express an opinion in support of or in opposition to a candidate for public office or a ballot measure. *See also SECTION 19.*

SECTION 6 – DEBATES

6.1 Speaking to the Motion. Councilmembers may speak on the motion at the time the motion is before the Council.

6.2 Interruption. No Councilmember, including the Presiding Officer, shall interrupt or argue with any other member while such member has the floor, other than the Presiding Officer's duty to preserve order during meetings as provided in *Subsection 4.2.1* of these rules.

6.3 Courtesy. In the discussion, comments, or debate of any matter or issue, all speakers, including the Presiding Officer and Council members, shall be courteous in their language and deportment, and shall not discuss or comment on personalities, or indulge in derogatory remarks or make insinuations about

any other Councilmember, or any member of the staff or the public, but shall at all times confine their remarks only to those facts which are germane and relevant to the question or matter under discussion.

- 6.4 Violations. If a Councilmember violates these rules on debates, the Presiding Officer shall call such member to order, and the offending member shall be silent except to explain or continue in order. If the Presiding Officer violates these rules on debate or fails to call other members to order, any other Councilmember may, under a point of order, call the Presiding Officer or such other offending member to order, and the person being called to order shall be silent except to explain or continue in order.
- 6.5 Challenge to Ruling. Any Councilmember shall have the right to challenge any action or ruling of the Presiding Officer or other member, as the case may be, in which case the decision of the majority of the Councilmembers present shall govern.

SECTION 7 – PARLIAMENTARY PROCEDURES AND MOTIONS

- 7.1 Robert's Rules Supplementary. Except as provided in these Rules of Procedure, all City Council meetings shall be governed by *ROBERTS RULES OF ORDER, NEWLY REVISED* (latest edition). The City Attorney shall act as Parliamentarian when present; otherwise, the City Clerk shall act as Parliamentarian. If the Parliamentarian determines that a procedural issue is not adequately addressed by these Rules of Procedure or by Robert's Rules, the Council may handle the issue in any way that the majority of members who are present agrees is appropriate and which, in the opinion of the Parliamentarian, is not prohibited by law. Notwithstanding the foregoing, the proceedings of the Council may be conducted in an efficient and consensus-based manner.
- 7.2 Motions.
- 7.2.1 If a motion does not receive a second, it dies.
- 7.2.2 *Matters that do not constitute a motion include:* nominations; withdrawal of motion by the person making the motion; request for a roll call vote; point of order or privilege. Because these matters are not motions, a second is not needed.
- 7.2.3 A Councilmember may abstain from voting on a motion because of a conflict of interest or to preserve the appearance of fairness, but cannot then participate in discussion or argument about the motion. See *Subsection 8.3.*

- 7.2.4 A motion that receives a tie vote is deemed to have failed; provided that, except where prohibited by RCW 35A.12.100 or other law, the Mayor shall be allowed to vote to break a tie vote.
- 7.2.5 When making motions, Councilmembers shall be clear and concise and not include arguments for the motion within the motion.
- 7.2.6 After a motion has been made and seconded, Councilmembers may discuss their opinions on the issue prior to the vote.
- 7.2.7 A motion may be withdrawn by the maker of the motion at any time without the consent of the Council.
- 7.2.8 A "motion to table" is non-debatable and shall preclude all amendments or debates of the issue under consideration. A motion to table is to be used in instances where circumstances or situations arise which necessitate the interruption of the Councilmembers' consideration of the matter then before them. A motion to table, if passed, shall cause the subject matter to be tabled until the interrupting circumstances or situations have been resolved, or until a time certain, if specified in the motion to table. To remove an item from the table in advance of the time certain requires an affirmative vote of at least a majority of the whole membership of the Council.
- 7.2.9 A "motion to postpone to a certain time" is debatable and amendable and may be reconsidered at the same meeting. The question being postponed must be considered at a later time at the same meeting, or may be postponed to a date certain at a future Regular or Special City Council meeting.
- 7.2.10 A "motion to postpone indefinitely" is debatable but not amendable, and may only be reconsidered at the same meeting if it receives an affirmative vote of at least a majority of Councilmembers present.
- 7.2.11 A "motion to call for the question" shall immediately close debate on the main motion and is not debatable. This motion must receive a second and fails without an affirmative vote of at least all of the Councilmembers present minus one. Debate is reopened if the motion fails.
- 7.2.12 A "motion to amend" is a motion to modify the wording of a pending motion before that pending motion is voted upon by the Council, by inserting, adding, striking out, striking out and inserting, or substituting language. A motion to amend must be seconded. However, some motions cannot be amended. See *Subsection 7.2.13*.

- 7.2.13 *Motions that cannot be amended include:* motion to adjourn; motion to lay on the table; motion to take from the table; motion for roll call vote; motion to reconsider; point of order; motion to amend. (A motion to amend an amendment is allowed.)
- 7.2.14 Amendments shall be voted on first, then the main motion as amended (if the amendment received an affirmative vote).
- 7.2.15 Debate of the motion only occurs after the motion has been moved and seconded.
- 7.2.16 The Mayor, City Attorney or City Clerk shall repeat the motion prior to voting by the Council.
- 7.2.17 The City Clerk shall take a roll call vote, if requested by the Mayor, City Attorney, a Councilmember, or as required by law.
- 7.2.18 When a question has been decided, any Councilmember who voted in the majority may move for reconsideration, but no motion for reconsideration of a vote shall be made until the next Regular City Council meeting.
- 7.2.19 These rules may be amended, or new rules adopted, by a majority vote of the full Council at a Regular or Special City Council meeting.
- 7.3 Waiver of Rules. The Council may, by motion that carries with an affirmative vote of at least a majority of the whole membership of the Council, waive, suspend, or modify these Rules of Procedure.

SECTION 8 – VOTING

- 8.1 Voice Vote. In general, voice votes shall be used. Voice votes are a generalized verbal indication by the Council as a whole of “yea or nay” on a matter, the outcome of which vote shall be recorded in the official minutes of the Council. Silence of a Councilmember during a voice vote shall be recorded as a vote with the prevailing side, except where the Councilmember abstains from participation, discussion and voting because of a stated conflict of interest, to preserve the appearance of fairness, or for other good cause. See *Subsection 8.3*. The Presiding Officer shall announce the outcome of each voice vote immediately thereafter and the result of each vote shall be recorded in the minutes.
- 8.2 Roll Call Vote. A roll call vote may be requested by the Mayor or by any Councilmember. When a roll call vote has been requested, the Clerk shall call upon each Councilmember and request an individual “yes or no”. The Presiding Officer shall announce the result of the vote immediately thereafter and the result of the vote shall be recorded in the minutes.

8.3 Abstentions.

8.3.1 *Abstention allowed for conflict of interest or appearance of fairness.* It is the responsibility of each Councilmember to vote when requested on a matter before the full Council. However, a Councilmember may abstain from discussion and voting on a question because of a stated conflict of interest or to preserve the appearance of fairness. Should the City Attorney indicate that the Mayor or a Councilmember is required to abstain from further participation on an issue, the affected person must abstain except where abstention would result in a lack of a quorum (or lack of a majority vote where required by law). See *Subsection 8.6.1*. Failure to abstain may cause delay in proceedings to allow court intervention. See *Subsection 8.6.3*.

8.3.2 *Notice of intent to abstain required.* Notice of intent to abstain shall be given prior to any discussion or participation on the subject matter or as soon thereafter as the Mayor or Councilmember perceives a need to abstain.

8.3.3 *Need to abstain shall be confirmed by City Attorney.* Prior to the time that the Mayor or a Councilmember gives notice of intent to abstain, the affected person shall confer with the City Attorney to determine if abstention is truly required. If the intended abstention can be anticipated in advance, the conference with the City Attorney should occur prior to the meeting at which the subject matter is scheduled to come before the City Council. If that cannot be done, the affected person should advise the City Council that he or she has an "abstention question" that he or she wants to review with the City Attorney. A brief recess should then be taken for that purpose.

8.3.4 *Abstaining member shall advise the Council and end participation.* After conferring with the City Attorney, the Mayor or Councilmember wishing to abstain from a vote because of a conflict of interest or to preserve the appearance of fairness shall so advise the Council, and shall then remove and absent himself or herself from the Council's deliberations and considerations of the motion, and shall have no further participation in the matter.

8.4 Votes by Mayor. Except where prohibited by law, the Mayor may only vote to break a tie vote of the Council and only with respect to matters other than the passage of any ordinance, grant, or revocation of franchise or license, or any resolution for the payment of money.

8.5 Votes by Councilmember Serving as Presiding Officer. In accordance with RCW 35A.12.110, a Councilmember serving as Presiding Officer in the absence

of the Mayor shall have the same rights to vote on matters before the Council as the person would otherwise have as a Councilmember.

8.6 Effect of Challenges Based on Conflict of Interest or Appearance of Fairness.

8.6.1 *If abstention removes quorum or majority.* Should the City Attorney determine that the participation of the Mayor or a Councilmember in discussion and voting on an issue would be a conflict of interest or appear to violate the appearance of fairness doctrine, or any specific part of chapter 42.36 RCW, that person shall abstain from further participation unless, as provided by RCW 42.36.090, a challenge to a member or members of the decision-making body would cause a lack of a quorum or would result in a failure to obtain a majority vote as required by law; in such cases, any challenged member(s) shall be permitted to fully participate in the proceedings and vote as though the challenge had not occurred if the member(s) publicly disclose the basis for disqualification prior to rendering a decision and each party has a full opportunity to present regarding the information relating to the issues. Such participation shall not subject the decision to a challenge by reason of violation of the appearance of fairness doctrine.

8.6.2 *Refusal to Abstain.* Should the Mayor or a Councilmember refuse to abstain from participation and voting on an issue after the City Attorney has determined that abstention is necessary, the challenged person may be disqualified from participating and voting on that issue upon a vote to disqualify that is passed by a majority of the other Councilmembers present who are eligible to vote on the underlying issue.

8.6.3 *Failure to Abstain.* Should the Mayor or a Councilmember fail to abstain from participation and voting on an issue where that officer knows or should have known that a conflict of interest is present or that the appearance of fairness would be compromised, such failure to abstain by the Mayor or Councilmember shall be presumed to constitute a lack of good faith for purposes of officer indemnity under RCW 4.96.041; provided that, nothing herein shall preclude the Council from determining that the Mayor or Councilmember acted in good faith upon a failure to abstain.

8.7 Failure to Vote. In the absence of an abstention on the basis of a conflict of interest, appearance of fairness, or other good cause, an abstention or failure to vote of a Councilmember present at the proceeding shall constitute an affirmative vote on the proposition or motion before the Council.

SECTION 9 – ORDINANCES AND RESOLUTIONS

9.1 Ordinances. All ordinances shall be reviewed by the City Attorney. No ordinance shall be prepared or presented to the Council unless requested by two

members of the Council, the Chair of a Council Committee, the Mayor, or the City Administrator. Unless waived, all ordinances shall be in writing, and the titles thereof shall be read aloud by the Presiding Officer prior to a vote being called. A motion and a second are required to bring an ordinance to a vote.

In accordance with RCW 35A.12.120 and .130, an ordinance must be adopted by the affirmative vote of at least a majority of the whole membership of the Council, subject to the Mayor's approval and Council reconsideration of a mayoral veto; provided that, public emergency ordinances require an affirmative vote of at least a majority plus one of the whole membership of the Council. A public emergency ordinance is one designated to protect public health, public safety, public property, or public peace.

In accordance with RCW 35A.12.160, either the full text of the ordinance or a summary shall be published as soon as practicable in the City's designated official newspaper after adoption. An ordinance becomes effective five (5) days after publication unless otherwise specified in the ordinance or as required by law.

- 9.2 Resolutions. Resolutions may be prepared or presented to the Council at the request of two Councilmembers, the Chair of a Council Committee, the Mayor, or the City Administrator. All resolutions shall be in writing, and the titles thereof shall be read aloud by the Presiding Officer prior to a vote being called on their passage. A request for a full reading of a resolution need not be seconded.

Discussion and debate by the City Council on resolutions will be held prior to the vote on a resolution. Prior to voting on passage of a resolution, the Council may decide by majority vote to amend the resolution or direct staff to review the proposed resolution and make a report to the Council.

A resolution must be passed by an affirmative vote of at least a majority of the whole membership of the Council; if passed, the resolution becomes effective immediately.

SECTION 10 – PUBLIC COMMENTS

- 10.1 Requesting to Speak. During the Public Comment period, members of the audience may comment on any matter related to City business. Persons addressing the Council who are not specifically scheduled on the agenda will be requested to fill out the speaker sign-in sheet at the City Clerk's desk, then step up to the podium, give their name and address for the record. All remarks must be addressed to the Council as a whole. The City Clerk shall serve as timekeeper. The Presiding Officer may make exceptions to the time restrictions when warranted. *See Subsection 3.5 for requests to make special presentations to the Council.*

- 10.2 Time Limit. Comments are limited to three (3) minutes per person. The Presiding Officer may adjust the time restrictions when warranted by special circumstances and after approval of a majority of Councilmembers present.
- 10.3 Advertising or Promoting Political Cause is Prohibited. Except as authorized or required by RCW 42.17A.555, no person may address the Council for the purpose of assisting a campaign for election of a person to any office or for the promotion of, or opposition to, any ballot proposition. Further, no person may address the Council for the purpose of advertising any item, service, or product for profit or otherwise.
- 10.4 Other Prohibited Remarks. Any person who causes actual disruption by making personal attacks, using hate speech, making slanderous remarks or other disruptive conduct while addressing the Council shall be barred from further participation by the Presiding Officer, unless permission to continue is granted by a majority vote of Councilmembers present.

SECTION 11 – LEGISLATIVE AND QUASI-JUDICIAL HEARINGS

- 11.1 Legislative Hearings. Legislative public hearings are held to obtain public input on legislative decisions on matters of policy and in some instances are required by state law.
- 11.1.1 Before opening a legislative public hearing, the Presiding Officer shall state the hearing procedures.
- 11.1.2 The Department Director or the Director's designee shall present the issue to the Council and respond to questions.
- 11.1.3 A person may speak for up to five (5) minutes. A person may speak for up to ten (10) minutes if representing a group of two or more. No one may speak for a second time without the approval of the Presiding Officer, and only after everyone who wishes to speak has had an opportunity. The Presiding Officer may make exceptions to the time restrictions when warranted by the circumstances; provided that, the Council upon a motion and majority vote of Councilmembers present, may also make exceptions to the time restrictions or may overrule an exception granted by the Presiding Officer.
- 11.1.4 The City Clerk shall serve as timekeeper during legislative hearings.
- 11.1.5 After the speaker has used his or her allotted time, Councilmembers may ask questions of the speaker and the speaker may respond, but may not engage in further debate.

- 11.1.6 The hearing will then be closed to public participation and open for discussion among Councilmembers.
- 11.1.7 The Presiding Officer may request to change or modify the procedures at a particular meeting or hearing, but the decision to do so may be overruled by a majority vote of Councilmembers present.
- 11.1.8 When necessary in the interests of fairness or when required by circumstances, the hearing may be recessed and continued to a date certain upon approval by a majority vote of Councilmembers present.
- 11.2 Quasi-judicial Hearings. Quasi-judicial hearings involve the legal rights of specific parties and afford procedural due process, which may include receiving testimony, making a record of the evidence considered by the Council and issuing specific Council findings. The following procedures shall apply:
 - 11.2.1 Before opening a quasi-judicial hearing, the Presiding Officer shall state the hearing procedures.
 - 11.2.2 The Department Director of the department most affected by the subject matter of the hearing, or said Director's designee, shall be afforded fifteen (15) minutes to present the City's position and findings. City staff shall be available to respond to Council questions.
 - 11.2.3 The proponent or applicant spokesperson shall speak second and be allowed fifteen (15) minutes for presentation. The proponent may divide up the fifteen (15) minutes between more than one speaker and may reserve time to be added to the maximum time for rebuttal. Council may ask questions.
 - 11.2.4 The opponent spokesperson, if any, shall speak third and be allowed fifteen (15) minutes for presentation, may divide up the fifteen (15) minutes between more than one speaker, and may reserve time to be added to the maximum time for rebuttal. Council may ask questions.
 - 11.2.5 Each side shall then be allowed five (5) minutes for rebuttal, with the proponent spokesperson speaking first, followed by the opponent spokesperson. Any time reserved from the speaker's presentation may be added to the five minute limit.
 - 11.2.6 After the proponent and opponent have used their speaking time, ten (10) minutes shall be allowed for the Council to ask further questions of the speakers, who shall be entitled to respond but who must limit their response to the question asked.

- 11.2.7 The City Clerk shall serve as timekeeper during these hearings. By motion and majority vote of Councilmembers present, the Council may extend the times provided in this Subsection 11.2.
- 11.2.8 When necessary in the interests of fairness or when required by circumstances, the hearing may be recessed and continued to a date certain upon approval by a majority vote of Councilmembers present; provided that, the record is closed for the entire period of continuance and only Councilmembers who were present for the earlier portion of the hearing, or Councilmembers who have had the opportunity to consider the entirety of the record (verbatim transcript or audio and/or visual recording), may participate when the hearing resumes. Examples of reasons to allow a recess include, but are not limited to, absence of a necessary party due to illness or emergency; request for additional argument on an issue by a majority vote of the Council; inability to complete the hearing due to circumstances beyond the parties' control, such as power failure or natural disaster.
- 11.2.9 Consistent with RCW 42.30.140(2), the Council may consider the matter in an executive session or otherwise.
- 11.2.10 Except as otherwise allowed by law, after the Council has publicly considered the arguments and evidence presented, the Council shall then vote on the issue that was the subject of the hearing.

SECTION 12 – TOWN HALL MEETINGS

- 12.1 Purpose. Town Hall meetings provide a forum for Council members and community members to discuss City initiatives, emerging issues and community concerns, opinions and preferences regarding specific topics affecting the Black Diamond community, and for the City to respond to community questions. It is not the purpose of Town Hall meetings to take final action on any matter before the City Council.
- 12.2 Town Hall Agenda. The scheduling, agenda preparation and public comment period for Town Hall meetings shall conform to these Rules of Procedure, except that public comment may be limited to specific topics identified in the Town Hall meeting agenda. The speakers should limit their time to 10 minutes, to allow time for all speakers to speak. A second round of comment will be allowed, and speakers will be limited to three minutes. The Presiding Officer shall retain authority to impose rules of procedure to ensure open discussion during the Town Hall meeting, that people with opposing or different viewpoints receive an equal opportunity to speak, that everyone receive an opportunity to speak before any one speaker receives a second opportunity to speak, and that order and decorum is maintained. When necessary to ensure that everyone receive an

opportunity to speak, the Presiding Officer shall retain authority to limit all persons' remarks to an equal period of time.

- 12.3 Staffing. City staff and the City Attorney shall not be required to attend Town Hall meetings unless otherwise directed by the Mayor; with the exception that, the City Clerk, or designee, shall attend Town Hall meetings for the purpose of keeping a journal of the minutes of the meeting and to act as the City Council's parliamentarian in the absence of the City Attorney.

SECTION 13 – MAYOR PRO TEMPORE SELECTION PROCESS

Annually at the first meeting of a new Council, the members thereof, by majority vote, shall designate one of their members as Mayor Pro Tempore for such period as the Council may specify. The Mayor Pro Tempore shall serve in the absence or temporary disability of the Mayor. In the event the Mayor Pro Tempore leaves, the Council shall, by a majority vote, designate one of the remaining Councilmembers as Mayor Pro Tempore.

SECTION 14 – SELECTING A COUNCIL MEMBER PRO TEMPORE OR FILLING A VACANT COUNCIL POSITION

- 14.1 Selecting a Councilmember Pro Tempore. In accordance with RCW 35A.12.065, in the event of extended excused absences or disability of a Councilmember, the remaining members by majority vote may appoint a Councilmember Pro Tempore to serve during the period of absence or disability.
- 14.2 Filling Vacant Council Position. In the event that an unexpired Council position becomes vacant, the City Council has ninety (90) days from the occurrence of the vacancy to appoint, by majority vote of a quorum of the Council, a qualified person to fill the vacancy in accordance with Chapter 42.12 RCW. The Council may make such appointment at its next regular meeting, or at a special meeting called for that purpose.

SECTION 15 – COUNCIL MEETING STAFFING

- 15.1 The City Administrator or the City Administrator's designee must attend all meetings of the Council, unless excused.
- 15.2 The City Attorney shall attend all meetings of the Council unless excused, and upon request, may provide comment, either written or oral, on legal questions. An assistant city attorney shall attend meetings when the City Attorney has been excused or is unable to attend due to illness or emergency.
- 15.3 It shall be the responsibility of each Department Head to ensure that a department representative or other City staff attend as necessary to present the

department's agenda items to the Council and answer Council member questions.

SECTION 16 – COUNCIL RELATIONS WITH STAFF

- 16.1 The Mayor, City staff and Councilmembers shall respect the different roles each officer plays in a successful City and will strive to treat each other with courtesy and respect when questions, comments or criticism are expressed in a public meeting.
- 16.2 City staff will acknowledge the Council as policy makers, and the Councilmembers will acknowledge the Mayor and City staff as administrators of the Council's policies.
- 16.3 All written informational material requested of City staff by any individual Councilmember that the requesting Councilmember then intends to reference or introduce at a Council meeting shall be submitted or made available to all Councilmembers prior to being referenced or introduced at the meeting, unless other reasons preclude such distribution, in which case the reasons shall be communicated by the requesting Councilmember to the Mayor or the Mayor's designee and such reason provided to all Councilmembers.
- 16.4 Councilmembers shall not attempt to coerce or influence City staff in the administration of personnel, the awarding of contracts, the selection of consultants, the processing of development applications or purchases of City licenses or permits.
- 16.5 Councilmembers shall not attempt to change or interfere with the operating rules and practices of any City department.
- 16.6 No Councilmember shall direct the Mayor or City staff to initiate any action or prepare any report that is significant in nature, or initiate any project or study, without the consent of at least a majority of the whole membership of the Council.
- 16.7 Individual requests for information can be made directly to Department Directors unless otherwise determined by the Mayor. If the request would create a change in work assignments or City staffing levels, the request must be made through the Mayor.

SECTION 17 – APPOINTMENT BY MAYOR & CONFIRMATION BY CITY COUNCIL – WHEN REQUIRED

- 17.1 Mayor's Power to Appoint. In accordance with RCW 35A.12.090, the Mayor shall have the power of appointment and removal of all appointive officers and employees subject to any applicable law, rule, or regulation relating to civil

service; provided that, in accordance with BDMC 2.08.020, each officer may hire any employee assigned to his or her department.

- 17.2 Confirmation by Council. In accordance with RCW 35A.12.090, confirmation by the City Council of mayoral appointments of officers and employees is required when City ordinance provides for the confirmation of such appointments. In addition, the City Council may require confirmation of mayoral appointments by the Council whenever the qualifications for the office or position have not been established by City ordinance.

SECTION 18 – COUNCIL COMMITTEES AND CITIZEN ADVISORY BOARDS

18.1 Council Standing Committees.

- 18.1.1 *Establishment.* The City Council, by a majority vote of at least the whole membership of the Council, is authorized to establish Council Standing Committees to provide recommendations on major policy items to the City Council.
- 18.1.2 *Mayoral Appointment/Council Confirmation.* The Mayor shall appoint the members of each Council Standing Committee with the Committee Chair appointed from the membership of the Council. Membership of any given committee may include no more than two (2) Councilmembers, including the Committee Chair. Annually at its first meeting in January, or as soon thereafter as practicable, the Council upon a majority vote of at least the whole membership of the Council shall confirm or decline the Mayor's appointments to Council Standing Committees.
- 18.1.3 *Agenda Setting/Proceedings.* The agenda setting and proceedings of each Council Standing Committee shall be as follows:
- a. The Committee Chair will work with the Mayor and City staff to finalize the agenda to help guide the direction of the meeting.
 - b. If the Committee Chair is unable to attend a scheduled meeting, the remaining Councilmember member shall chair the meeting.
 - c. In instances where a committee member cannot be present at a committee meeting, it is the responsibility of that member to contact an alternate Councilmember to attend in his or her place.
 - d. Committees may forward issues with or without changes to staff for recommendation to the City Council. Reports on the activities of the committees may be given under the Council Reports section of the Council agenda by the Committee Chair.

- e. Matters forwarded from a Council Standing Committee to the City Council as a whole will remain at that level unless requested to be returned to Committee by a majority of the Council.
- f. Matters may be removed from Council Standing Committees and brought before the Council as a whole by a motion of the Council receiving an affirmative vote of at least a majority of the whole membership of the Council.
- g. Should a Council Standing Committee be split on whether a matter should be approved, the matter may move forward to Council without a recommendation. It is the Mayor's responsibility to bring matters before Council.
- h. Frequency of Council Standing Committee meetings shall be determined by the Mayor and Committee Chair
- i. Any direction from the Council Standing Committee for work to be performed by staff must be approved by the Mayor.
- j. Audience participation at a Council Standing Committee meeting is at the discretion of the Committee Chair.

18.1.4 *Standing Committees Authorized.* Standing Council committees may include, but shall not be limited to:

- a. *Budget/Finance/Administration Committee:* The Budget, Finance and Administration Committee, in conjunction with City Staff, may consider matters related to the financial issue of the City, including the annual and capital budgets including revenues and expenditures, sales of bonds, general fiscal and financial conditions, voucher approval, rates and fees, audit and operations of the City, including but not limited to, facilities and properties computerization, periodic budget and financial reports, and policy matters related to personnel, in coordination with the finance and administration departments.
- b. *Parks/Cemetery Committee:* The Park and Cemetery Committee, in conjunction with City Staff, may consider matters related to planning and implementation of park and recreational facilities, capital improvement program, trails and cemetery.
- c. *Planning/Community Services Committee:* The Planning and Community Services Committee, in conjunction with City Staff, may consider matters of a non-quasi-judicial nature related to community growth and development, including but not limited to,

planning of the physical, economic, aesthetic and social development of the City, comprehensive plan, zoning code, and housing, annexation policies, code enforcement. This committee may also consider matters not included in other committee's scopes of authority.

- d. *Public Safety Committee:* The Public Safety Committee, in conjunction with City Staff, may consider issues related to the public health, safety and welfare of the citizens of Black Diamond including but not limited to, law enforcement, fire safety, court, hazardous materials, animal control, special events and emergency services.
- e. *Public Works Committee:* The Public Works Committee, in conjunction with City Staff, may consider matters related to water, sewer, solid waste, recycling, utility franchises, storm water management, transportation, capital improvement program, transit, streets, street lighting, signalization and street local improvement.

18.2 Task Force Committees and Intergovernmental Groups.

- 18.2.1 The Mayor or a majority of the whole membership of the City Council may establish Task Force Committees on an *ad hoc* basis to consider matters that require a special approach or emphasis. Task Force Committees may be established and matters referred to them at Council study sessions. The Mayor shall appoint Council representatives to intergovernmental councils, boards and committees. Such appointments and their terms shall be communicated to the Council by the Mayor as soon as practical.
- 18.2.2 Task Force Committees shall consider all matters referred to them. The Chair of each Task Force Committee shall report the findings of the Committee to the Council. Committees may refer items to the Council with no Committee recommendation. Once the Committee's findings have been delivered to the Council, the Committee's duties shall be considered complete and the Committee dissolved, unless specifically re-tasked by the Council.

18.3 Advisory Boards, Committees and Commissions. Citizen advisory boards, committees and commissions may be established by ordinance from time to time, and shall consist of citizens appointed pursuant to the establishing ordinance and serving in the capacity and for the purposes indicated in the ordinance; such boards, commissions and committees shall act in an advisory capacity to the City Council.

SECTION 19 – SPEAKING WHEN REPRESENTING THE CITY COUNCIL

- 19.1 An Official City Position Requires a Public Vote. The City does not have an official position on any issue, whether the issue is political or non-political in nature, unless in accordance with RCW 42.17A.555, the City Council has taken a public vote and at least a majority of the whole membership of the Council votes to adopt the position. Failure of a majority of the Council to vote in favor of a position pursuant to RCW 42.17A.555 shall not constitute adoption of a contrary position; in such cases the City shall continue to have no official position on the issue.
- 19.2 Personal Opinions Must Be Distinguished From City Positions on an Issue.
- 19.2.1 *Speaking to persons about issues.* Whenever the Mayor or a Councilmember is speaking to a person or group of persons and the Councilmember expresses an opinion on an issue, whether the issue is political or non-political, the Mayor or Councilmember must clearly state whether the opinion represents the official position of the City of Black Diamond and its City Council, or whether it is only the speaker's personal opinion.
- 19.2.2 *Speaking on behalf of the City.* If the Mayor or a Councilmember appears on behalf of the City before another governmental agency, a community organization, or through the media, for the purpose of commenting on an issue, the Mayor or Councilmember must state the official position of the City Council, if known, on such issue. Personal opinions and comments which differ from those of the official position of the Council may be expressed only if the speaker clarifies that these statements do not represent the City Council's position.
- 19.2.3 *Expressing the views of other Councilmembers.* Prior to representing the position of an elected City official on an issue to the media, another government agency, a community organization, or members of the public, the Mayor and Councilmembers must have permission from that elected official; provided that, presenting how another elected official voted in an official public vote of the Council shall not require permission.

SECTION 20 – TRAVEL AUTHORIZATION

The City Council shall authorize and approve expenditures of city funds to pay for travel-related costs only in accordance with an adopted budget, and/or chapters 2.56 and 2.57 BDMC and/or the City's adopted administrative.

SECTION 21 CONFIDENTIALITYIn General. Certain information is required to be kept confidential under state or federal law. The Mayor and Councilmembers must keep such information confidential when that information has been provided

to them by City staff or otherwise becomes known to them during the performance of their duties in office. Confidential information includes, but is not limited to, certain personnel and employment information, certain information regarding pending labor and other contracts, and certain information regarding negotiations for the sale or purchase of property. It is the duty of the Mayor and each Councilmember to consult with the City Attorney should the official have a question about whether any particular information is confidential and may not be released.

- 21.2 Executive Sessions. The Mayor and Councilmembers must keep confidential all written materials and verbal information provided to them during Executive Sessions and may not provide them to persons not present during Executive Sessions, unless, after consultation with the City Attorney, such provision will not violate the confidentiality of Executive Session, or will not violate some other legal exemption or legal privilege..

City Council Rules of Procedure

Date of Adoption: _____

Resolution No. _____



RULES OF PROCEDURE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON

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RULES OF PROCEDURE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON

SECTION 1 – AUTHORITY

In accordance with RCW 35A.12.120, the Black Diamond City Council hereby establishes the following rules for the conduct of Council meetings, proceedings and business. These rules shall take effect upon adoption by resolution of the Council and until such time as they are amended or new rules are adopted in the manner provided for by these rules.

References.

RCW 35A.12.100 (Duties and authority of the mayor — Veto — Tie-breaking vote): “The mayor shall be the chief executive and administrative officer of the city, in charge of all departments and employees, with authority to designate assistants and department heads. The mayor may appoint and remove a chief administrative officer or assistant administrative officer, if so provided by ordinance or charter.^[1] He or she shall see that all laws and ordinances are faithfully enforced and that law and order is maintained in the city, and shall have general supervision of the administration of city government and all city interests. All official bonds and bonds of contractors with the city shall be submitted to the mayor or such person as he or she may designate for approval or disapproval. He or she shall see that all contracts and agreements made with the city or for its use and benefit are faithfully kept and performed, and to this end he or she may cause any legal proceedings to be instituted and prosecuted in the name of the city, subject to approval by majority vote of all members of the council. The mayor shall preside over all meetings of the city council, when present, but shall have a vote only in the case of a tie in the votes of the councilmembers with respect to matters other than the passage of any ordinance, grant, or revocation of franchise or license, or any resolution for the payment of money. He or she shall report to the council concerning the affairs of the city and its financial and other needs, and shall make recommendations for council consideration and action. He or she shall prepare and submit to the council a proposed budget, as required by chapter 35A.33 RCW. The mayor shall have the power to veto ordinances passed by the council and submitted to him or her as provided in RCW 35A.12.130 but such veto may be overridden by the vote of a majority of all councilmembers plus one more vote. The mayor shall be the official and ceremonial head of the city and shall represent the city on ceremonial occasions, except that when illness or other duties prevent the mayor's attendance at an official function and no mayor pro tempore has been appointed by the council, a member of the council or some other suitable person may be designated by the mayor to represent the city on such occasion.”

¹ For reference, the City of Black Diamond does not operate under a city charter.

RCW 35A.11.020 (Powers vested in legislative bodies of noncharter and charter code cities): "The legislative body of each code city shall have power to organize and regulate its internal affairs within the provisions of this title and its charter, if any; and to define the functions, powers, and duties of its officers and employees; within the limitations imposed by vested rights, to fix the compensation and working conditions of such officers and employees and establish and maintain civil service, or merit systems, retirement and pension systems not in conflict with the provisions of this title or of existing charter provisions until changed by the people: PROVIDED, That nothing in this section or in this title shall permit any city, whether a code city or otherwise, to enact any provisions establishing or respecting a merit system or system of civil service for firefighters and police officers which does not substantially accomplish the same purpose as provided by general law in chapter 41.08 RCW for firefighters and chapter 41.12 RCW for police officers now or as hereafter amended, or enact any provision establishing or respecting a pension or retirement system for firefighters or police officers which provides different pensions or retirement benefits than are provided by general law for such classes.

Such body may adopt and enforce ordinances of all kinds relating to and regulating its local or municipal affairs and appropriate to the good government of the city, and may impose penalties of fine not exceeding five thousand dollars or imprisonment for any term not exceeding one year, or both, for the violation of such ordinances, constituting a misdemeanor or gross misdemeanor as provided therein. However, the punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime. Such a body alternatively may provide that violation of such ordinances constitutes a civil violation subject to monetary penalty, but no act which is a state crime may be made a civil violation.

The legislative body of each code city shall have all powers possible for a city or town to have under the Constitution of this state, and not specifically denied to code cities by law. By way of illustration and not in limitation, such powers may be exercised in regard to the acquisition, sale, ownership, improvement, maintenance, protection, restoration, regulation, use, leasing, disposition, vacation, abandonment or beautification of public ways, real property of all kinds, waterways, structures, or any other improvement or use of real or personal property, in regard to all aspects of collective bargaining as provided for and subject to the provisions of chapter 41.56 RCW, as now or hereafter amended, and in the rendering of local social, cultural, recreational, educational, governmental, or corporate services, including operating and supplying of utilities and municipal services commonly or conveniently rendered by cities or towns.

In addition and not in limitation, the legislative body of each code city shall have any authority ever given to any class of municipality or to all municipalities of this state before or after the enactment of this title, such authority to be exercised in the manner provided, if any, by the granting statute, when not in conflict with this title. Within constitutional limitations, legislative bodies of code cities shall have within their territorial limits all powers of taxation for local purposes except those which are expressly preempted by the state as provided in RCW 66.08.120, 82.36.440 [repealed], 48.14.020, and 48.14.080."

SECTION 2 – COUNCIL MEETINGS

- 2.1 Meetings Shall be Open to Public. All meetings of the City Council shall be open to the public and all persons shall be permitted to attend any meeting of this body, except as provided in Chapter 42.30 RCW (the Open Public Meetings Act). Under RCW 42.30.040, no person at the meeting shall be required to register or provide other information, to complete a questionnaire, or otherwise comply with any other conditions as a precondition to be allowed to attend. However, persons wishing to address the Council or otherwise present information to the Council during a Council meeting may be requested to register and identify themselves and their home address. Persons who disrupt a meeting of the Council may lose the right to be present for the remainder of the meeting. See *Section 2.10*.
- 2.2 Agenda. The City Clerk shall be responsible for preparing agendas for all City Council meetings that specify the time and place of the meeting and set forth a brief general description of each item to be considered by the Council. The agenda is subject to approval by the Mayor or the Mayor's designee.
- 2.3 Minutes. The City Clerk shall cause to be prepared action minutes of all of the Council meetings, which minutes shall contain an account of all official actions of the Council. Council meetings shall be electronically recorded and retained for the period of time as provided by State law. No changes shall be made to minutes except by motion approved by a majority of the Council at a properly noticed meeting.
- 2.4 Schedule of Regular Meetings. In accordance with BDMC 2.04.010, the regular meetings of the City Council shall be held on the first and third Thursdays of every month at 7:00 p.m. in the City Hall Council Chambers located at 25510 Lawson Street, Black Diamond, Washington. The regular meeting location may be changed by a majority vote of the City Council. Special Council Meetings will be held on the second Thursday of the month at 6:00 p. m. Town Hall meetings shall be held bi-monthly (Jan, Mar, May, July, Sept, Nov) on the second Thursday of the month at 7:00 p.m. following the Special Council Meeting.in the City Hall Council Chambers located at 25510 Lawson Street, Black Diamond, Washington. The Town Hall Meeting will be adjourned by 9:00 p.m. unless otherwise amended by a majority vote of the Council.
- 2.5 Quorum Required. A quorum shall be required to transact Council business. The presence of a majority of the whole membership of the Council who are also eligible to vote at a Council meeting shall constitute a quorum. Should less than a quorum be present at the time of roll call, any Councilmember present may, upon belief that late arrival of one or more Councilmembers will enable a quorum to be created, make a motion that the Council meeting be recessed for up to one hour; should a quorum still be lacking at the end of the recess period, the

meeting shall be adjourned. As authorized under RCW 42.30.090, the City Clerk may adjourn the meeting if all Councilmembers are absent.

- 2.6 Holidays. Should a scheduled Council meeting fall on a legal holiday, the meeting shall be rescheduled to the next business day that is not a legal holiday or to another day certain by majority vote of Councilmembers present.
- 2.7 Study Sessions. Study sessions, or meetings to review upcoming and pertinent business of the City, may be scheduled as special meetings of the Council subject to the same notification procedures set forth below for special meetings.

Special Meetings. In accordance with chapter 42.30 RCW, a special meeting of the City Council may be called by the Mayor or at the request of any three (3) Councilmembers by written notice delivered to each Councilmember.

Emergency Meetings. In accordance with RCW 42.30.070 and .080, if, by reason of fire, flood, earthquake, or other emergency, there is a need for expedited action by the City Council to meet the emergency, the Presiding Officer of the Council may provide for a meeting site other than the regular meeting site and the public meeting notice requirements shall be suspended during the emergency.

- 2.8 Executive Sessions. An executive session is a Council meeting that is closed except to the Council, the Mayor, the City Administrator, the City Attorney and staff members or others authorized to attend by the Mayor or a majority of Councilmembers present. In accordance with RCW 42.30.030 and .110, other persons and members of the public are prohibited from attending executive sessions.

Executive sessions may be held during regular Council meetings, Special Council meetings, or Council Study Sessions. In addition, the Council may retire to hold an executive session during one of these meetings. When this occurs, the portions of the meeting that are not part of the executive session shall continue to be open to the public. Prior to convening an executive session, the Presiding Officer shall make an announcement that an executive session is being held and inform the public when the executive session shall end; provided that, the ending time of an executive session may be extended by announcement of the Presiding Officer. Executive sessions may only be called to consider such matters as authorized by RCW 42.30.110.

- 2.9 Cancellation of Meetings. The Mayor, or in the absence of the Mayor the Mayor Pro Tem, or any three members of Council may cancel a meeting and upon proper notice given by the City Clerk.
- 2.10 Disruption of Meetings. As authorized by RCW 42.30.050, should any Council meeting be interrupted by a person or group of persons so as to render the

orderly conduct of such meeting unfeasible, such person or persons causing the interruption may be ordered removed from the meeting and prohibited from returning to attend the remainder of the meeting. If necessary to restore order, the Council may order the meeting room cleared and continue in session or may adjourn the meeting and reconvene at another location selected by majority vote of the Councilmembers present. In such a session, final disposition may be taken only on matters that appear on the agenda. The Council shall allow any members of the public or representatives of the media who were not participating in the disturbance to attend any session that follows the disturbance, except an executive session, provided that the Council is not prohibited from establishing a procedure for readmitting individuals who were not responsible for disturbing the orderly conduct of the meeting.

SECTION 3 – REGULAR COUNCIL MEETING ORDER OF BUSINESS

- 3.1 Preparation of Council Agenda. All items to be included on the agenda for consideration at a Council meeting should be submitted to the City Clerk in full no later than 10:00 a.m. nine days prior to the scheduled Council meeting. Once the agenda has been finalized and provided to the Council, items added to the agenda may be declined to be considered by the Council at the meeting for which the agenda was prepared, until a future Council meeting date, which date shall be specified by the Council.

The form of agenda of a Regular City Council meeting shall be as follows:

- 3.2 Call to Order. The Presiding Officer shall call the meeting to order.
- 3.3 Flag Salute. The Presiding Officer shall lead the flag salute. However, the Presiding Officer may designate a Councilmember or other person to lead the flag salute.
- 3.4 Roll Call. The City Clerk will call the roll and determine whether quorum is satisfied. *See Subsection 2.5.*
- 3.5 Appointments, Announcements, Proclamations and Presentations.
- 3.5.1 *Appointments.* In accordance with the Black Diamond Municipal Code and these Rules of Procedure, individuals appointed by the Mayor to hold positions within City government or on various committees, boards and commissions may require confirmation by the Council. Where confirmation is required, the vote of the Council may be preceded by discussion in executive session. *See SECTION 17 and SECTION 18.*
- 3.5.2 *Announcements.* An announcement is a brief statement that informs the public of an event or happening of general interest. However, it cannot be a statement regarding a subject prohibited below *Subsection 3.5.4*

3.5.3 *Proclamations.* A proclamation is an official announcement made by the Mayor or the City Council regarding a non-controversial event, activity or special interest group which has had a major city-wide impact. The Mayor will read the proclamation and may invite guests to speak on the topic for no more than five (5) minutes.

3.5.4 *Presentations.* Any person(s) or organization(s) wishing to make a presentation to the Council must first submit a completed "Request to be on Council Agenda Form" with the City Clerk. The request should be made at least two weeks prior to the intended Council date. The Mayor or the Mayor's designee will determine if the proposed presentation is approved and will notify the applicant of the selected meeting date. If the presentation is not approved, the Mayor or the Mayor's designee will notify the applicant of the decision and the reason(s) for the decision. Presentations will not last more than five (5) minutes in length or unless at the request of the Mayor or Mayor's designee. Upon motion and approval of a majority of Councilmembers present, the Council may authorize presentations and may determine their length.

Prohibited Topics. Except as authorized or required by RCW 42.17A.555, no person may use this time to address the Council for the purpose of assisting a campaign for election of a person to any office or for the promotion of, or opposition to, any ballot proposition. Further, no person may use this time to address the Council for the purpose of advertising

3.6 Consent Agenda. Approval of the Consent Agenda, including items considered to be routine and non-controversial, may be approved by one motion. Any Councilmember may remove any item from the Consent Agenda for separate discussion and action. Items on the Consent Agenda include but are not limited to the following:

- a. Approval of minutes.
- b. Fixing dates for public hearings and appeals.
- c. Approval of claims, vouchers and payroll, bid awards and contracts.
- d. Approval of property as surplus.
- e. Authorization of grant applications.
- f. Approval of interlocal agreements.
- g. Other items designated by the City Council.

- 3.7 Public Comments. Members of the audience may comment on any matter related to City business during the Public Comment period. *See Section 10.*
- 3.8 Legislative Public Hearings. Individuals may comment on legislative decisions regarding matters of policy. *See SECTION 11.*
- 3.9 Quasi-judicial Hearings. More formal proceedings are held to determine the legal rights of specific parties, which include the receipt of proponent and opponent testimony. *See SECTION 11.*
- 3.10 Agenda Modifications. The Presiding Officer shall announce any changes to the Council's published agenda.
- 3.11 Unfinished Business. Unfinished business consists of subjects discussed by the Council at a previous regular or special meeting and which have been placed on the agenda for additional discussion or resolution.
- 3.12 New Business, Ordinances and Resolutions.
- 3.12.1 *New Business.* New business shall mean topics or issues that have not previously been before the City Council for discussion or other action, other than ordinances and resolutions.
- 3.12.2 *Ordinances.* Ordinances prescribe general, uniform, and permanent rules of conduct and constitute the local law of the City of Black Diamond. *See Subsection 9.1.*
- 3.12.3 *Resolutions.* Resolutions concern matters of special, temporary, or ministerial character and express the opinion or mind of the City Council. *See Subsection 9.2.*
- 3.13 Department Reports. Department Directors may report on action and activities of their respective departments.
- 3.14 Mayor's Report. The Mayor may report on significant activities since the last regular meeting, inquire on matters of general City business, or initiate investigation or action on a matter of concern.
- 3.15 Councilmember Reports. Councilmembers may report on Council committee discussions or other significant activities since the last regular meeting, or on matters of general City business, or may initiate investigation or action on a matter of concern.
- 3.16 City Attorney Report. The City Attorney may report on legally significant events or activities.

- 3.17 Executive Session. In accordance with RCW 42.30.030 and .110, executive sessions are closed to the general public. See *Subsection 2.8*.
- 3.18 Adjournment. With no further business to come before the Council, the Presiding Officer may adjourn the meeting.
- 3.19 Recess. The foregoing agenda may be interrupted for a stated time as called by the Presiding Officer to recess for any reason, including executive sessions.
- 3.20 Town Hall Meetings. Town Hall meetings are informal events that provide the City Council and members of the Black Diamond community an opportunity to discuss emerging issues and matters of local or general concern. See *SECTION 12*.

SECTION 4 – PRESIDING OFFICER

4.1 Who Shall Act as Presiding Officer.

4.1.1 The Mayor shall act as Presiding Officer at all meetings of the Council unless absent; in the absence of the Mayor, the Mayor Pro Tem will act as Presiding Officer. If both the Mayor and Mayor Pro Tem are absent and a quorum is present, the Council shall elect one of its members to serve as Presiding Officer until the return of the Mayor or Mayor Pro Tem. See *SECTION 13*.

4.2 Duties of Presiding Officer. The duties of the Presiding Officer shall be to:

4.2.1 Preserve order and decorum at all meetings of the Council and cause the removal of any person from any meeting for disorderly conduct.

4.2.2 Observe and enforce all rules adopted by the Council.

4.2.3 Recognize Councilmembers in the order in which they request the floor, and recognize every Councilmember who wishes an opportunity to speak; provided that, the mover of a motion shall be permitted to debate it first; provided further that, the Presiding Officer may allow discussion of an issue prior to the stating of a motion when such discussion would facilitate wording of a motion.

4.3 Reordering Items on Agenda. Without the necessity of any vote thereon, Presiding Officer may present matters before the Council for discussion, consideration and voting in a different order than they appear in the agenda when matters on the agenda are able to be placed under more than one classification or category.

- 4.4 Limitations on Political Speech. Except where the Council is properly considering a motion regarding whether the City shall take an official position on a political issue in accordance with RCW 42.17A.555, no Black Diamond elected official shall use a Council meeting to express an opinion in support of or in opposition to a candidate for public office or a ballot measure. See *also* SECTION 19.

SECTION 5 – COUNCILMEMBERS

5.1 Councilmember Attendance at Meetings.

- 5.1.1 Excused Absence. Councilmembers shall inform the Mayor or City Clerk in advance if the Councilmember will be unable to attend, or will be late to attend, any Council meeting. The Presiding Officer shall then announce during roll call that the Councilmember will be absent or late. Any absence following prior notice to the Mayor or City Clerk shall be noted in the minutes as an excused absence. Absence at a scheduled Council meeting due to sudden illness or emergency shall be noted in the minutes as an excused absence due to illness or emergency.
- 5.1.2 Excessive Absence Shall Create Vacancy. In accordance with RCW 35A.12.060, a Councilmember's position shall be deemed vacant if that Councilmember has three (3) consecutive unexcused absences from Regular Council meetings.
- 5.1.3 Telephonic or Other Electronic Attendance. Any Councilmember may attend any Council meeting by telephone, video conference, or other electronic means as long as all other persons present at the meeting can hear or otherwise understand all comments made and questions asked by the Councilmember and the Councilmember can hear or otherwise understand all comments made and questions asked by all other persons speaking at the meeting. The City Clerk shall reflect in the meeting minutes Councilmember attendance by telephone, video conference, or other electronic means.
- 5.2 Remarks. Councilmembers desiring to speak shall address the Presiding Officer and, when recognized, shall confine their remarks to matters currently under discussion, provided that a Councilmember may move to have a different matter considered by the Council, subject to these Rules of Procedure.
- 5.3 Questioning. Any Councilmember, including the Presiding Officer, shall have the right to question any individual, including members of the staff, on matters germane to the issue properly before the Council for discussion. Under no circumstances shall such questioning be conducted in a manner that would constitute a cross-examination of or an attempt to ridicule or degrade the individual being questioned.

- 5.4 Limitations on Political Speech. Except where the Council is properly considering a motion regarding whether the City shall take an official position on a political issue in accordance with RCW 42.17A.555, no Black Diamond elected official shall use a Council meeting as an occasion to express an opinion in support of or in opposition to a candidate for public office or a ballot measure. See also SECTION 19.

SECTION 6 – DEBATES

- 6.1 Speaking to the Motion. Councilmembers may speak on the motion at the time the motion is before the Council.
- 6.2 Interruption. No Councilmember, including the Presiding Officer, shall interrupt or argue with any other member while such member has the floor, other than the Presiding Officer's duty to preserve order during meetings as provided in Subsection 4.2.1 of these rules.
- 6.3 Courtesy. In the discussion, comments, or debate of any matter or issue, all speakers, including the Presiding Officer and Council members, shall be courteous in their language and deportment, and shall not discuss or comment on personalities, or indulge in derogatory remarks or make insinuations about any other Councilmember, or any member of the staff or the public, but shall at all times confine their remarks only to those facts which are germane and relevant to the question or matter under discussion.
- 6.4 Violations. If a Councilmember violates these rules on debates, the Presiding Officer shall call such member to order, and the offending member shall be silent except to explain or continue in order. If the Presiding Officer violates these rules on debate or fails to call other members to order, any other Councilmember may, under a point of order, call the Presiding Officer or such other offending member to order, and the person being called to order shall be silent except to explain or continue in order.
- 6.5 Challenge to Ruling. Any Councilmember shall have the right to challenge any action or ruling of the Presiding Officer or other member, as the case may be, in which case the decision of the majority of the Councilmembers present shall govern.

SECTION 7 – PARLIAMENTARY PROCEDURES AND MOTIONS

- 7.1 Robert's Rules Supplementary. Except as provided in these Rules of Procedure, all City Council meetings shall be governed by *ROBERTS RULES OF ORDER, NEWLY REVISED* (latest edition). The City Attorney shall act as Parliamentarian when present; otherwise, the City Clerk shall act as Parliamentarian. If the Parliamentarian determines that a procedural issue is not adequately addressed by these Rules of Procedure or by Robert's Rules, the Council may handle the

issue in any way that the majority of members who are present agrees is appropriate and which, in the opinion of the Parliamentarian, is not prohibited by law. Notwithstanding the foregoing, the proceedings of the Council may be conducted in an efficient and consensus-based manner.

7.2 Motions.

7.2.1 If a motion does not receive a second, it dies.

7.2.2 *Matters that do not constitute a motion include:* nominations; withdrawal of motion by the person making the motion; request for a roll call vote; point of order or privilege. Because these matters are not motions, a second is not needed.

7.2.3 A Councilmember may abstain from voting on a motion because of a conflict of interest or to preserve the appearance of fairness, but cannot then participate in discussion or argument about the motion. See *Subsection 8.3*.

7.2.4 A motion that receives a tie vote is deemed to have failed; provided that, except where prohibited by RCW 35A.12.100 or other law, the Mayor shall be allowed to vote to break a tie vote.

7.2.5 When making motions, Councilmembers shall be clear and concise and not include arguments for the motion within the motion.

7.2.6 After a motion has been made and seconded, Councilmembers may discuss their opinions on the issue prior to the vote.

7.2.7 A motion may be withdrawn by the maker of the motion at any time without the consent of the Council.

7.2.8 A “motion to table” is non-debatable and shall preclude all amendments or debates of the issue under consideration. A motion to table is to be used in instances where circumstances or situations arise which necessitate the interruption of the Councilmembers’ consideration of the matter then before them. A motion to table, if passed, shall cause the subject matter to be tabled until the interrupting circumstances or situations have been resolved, or until a time certain, if specified in the motion to table. To remove an item from the table in advance of the time certain requires an affirmative vote of at least a majority of the whole membership of the Council.

7.2.9 A “motion to postpone to a certain time” is debatable and amendable and may be reconsidered at the same meeting. The question being postponed must be considered at a later time at the same meeting, or may be

postponed to a date certain at a future Regular or Special City Council meeting.

- 7.2.10 A “motion to postpone indefinitely” is debatable but not amendable, and may only be reconsidered at the same meeting if it receives an affirmative vote of at least a majority of Councilmembers present.
 - 7.2.11 A “motion to call for the question” shall immediately close debate on the main motion and is not debatable. This motion must receive a second and fails without an affirmative vote of at least all of the Councilmembers present minus one. Debate is reopened if the motion fails.
 - 7.2.12 A “motion to amend” is a motion to modify the wording of a pending motion before that pending motion is voted upon by the Council, by inserting, adding, striking out, striking out and inserting, or substituting language. A motion to amend must be seconded. However, some motions cannot be amended. *See Subsection 7.2.13.*
 - 7.2.13 *Motions that cannot be amended include:* motion to adjourn; motion to lay on the table; motion to take from the table; motion for roll call vote; motion to reconsider; point of order; motion to amend. (A motion to amend an amendment is allowed.)
 - 7.2.14 Amendments shall be voted on first, then the main motion as amended (if the amendment received an affirmative vote).
 - 7.2.15 Debate of the motion only occurs after the motion has been moved and seconded.
 - 7.2.16 The Mayor, City Attorney or City Clerk shall repeat the motion prior to voting by the Council.
 - 7.2.17 The City Clerk shall take a roll call vote, if requested by the Mayor, City Attorney, a Councilmember, or as required by law.
 - 7.2.18 When a question has been decided, any Councilmember who voted in the majority may move for reconsideration, but no motion for reconsideration of a vote shall be made until the next Regular City Council meeting.
 - 7.2.19 These rules may be amended, or new rules adopted, by a majority vote of the full Council at a Regular or Special City Council meeting.
- 7.3 Waiver of Rules. The Council may, by motion that carries with an affirmative vote of at least a majority of the whole membership of the Council, waive, suspend, or modify these Rules of Procedure.

SECTION 8 – VOTING

- 8.1 Voice Vote. In general, voice votes shall be used. Voice votes are a generalized verbal indication by the Council as a whole of “yea or nay” on a matter, the outcome of which vote shall be recorded in the official minutes of the Council. Silence of a Councilmember during a voice vote shall be recorded as a vote with the prevailing side, except where the Councilmember abstains from participation, discussion and voting because of a stated conflict of interest, to preserve the appearance of fairness, or for other good cause. See *Subsection 8.3*. The Presiding Officer shall announce the outcome of each voice vote immediately thereafter and the result of each vote shall be recorded in the minutes.
- 8.2 Roll Call Vote. A roll call vote may be requested by the Mayor or by any Councilmember. When a roll call vote has been requested, the Clerk shall call upon each Councilmember and request an individual “yes or no”. The Presiding Officer shall announce the result of the vote immediately thereafter and the result of the vote shall be recorded in the minutes.
- 8.3 Abstentions.
- 8.3.1 *Abstention allowed for conflict of interest or appearance of fairness*. It is the responsibility of each Councilmember to vote when requested on a matter before the full Council. However, a Councilmember may abstain from discussion and voting on a question because of a stated conflict of interest or to preserve the appearance of fairness. Should the City Attorney indicate that the Mayor or a Councilmember is required to abstain from further participation on an issue, the affected person must abstain except where abstention would result in a lack of a quorum (or lack of a majority vote where required by law). See *Subsection 8.6.1*. Failure to abstain may cause delay in proceedings to allow court intervention. See *Subsection 8.6.3*.
- 8.3.2 *Notice of intent to abstain required*. Notice of intent to abstain shall be given prior to any discussion or participation on the subject matter or as soon thereafter as the Mayor or Councilmember perceives a need to abstain.
- 8.3.3 *Need to abstain shall be confirmed by City Attorney*. Prior to the time that the Mayor or a Councilmember gives notice of intent to abstain, the affected person shall confer with the City Attorney to determine if abstention is truly required. If the intended abstention can be anticipated in advance, the conference with the City Attorney should occur prior to the meeting at which the subject matter is scheduled to come before the City Council. If that cannot be done, the affected person should advise the City Council that he or she has an “abstention question” that he or she

wants to review with the City Attorney. A brief recess should then be taken for that purpose.

8.3.4 *Abstaining member shall advise the Council and end participation.* After conferring with the City Attorney, the Mayor or Councilmember wishing to abstain from a vote because of a conflict of interest or to preserve the appearance of fairness shall so advise the Council, and shall then remove and absent himself or herself from the Council's deliberations and considerations of the motion, and shall have no further participation in the matter.

8.4 Votes by Mayor. Except where prohibited by law, the Mayor may only vote to break a tie vote of the Council and only with respect to matters other than the passage of any ordinance, grant, or revocation of franchise or license, or any resolution for the payment of money.

8.5 Votes by Councilmember Serving as Presiding Officer. In accordance with RCW 35A.12.110, a Councilmember serving as Presiding Officer in the absence of the Mayor shall have the same rights to vote on matters before the Council as the person would otherwise have as a Councilmember.

8.6 Effect of Challenges Based on Conflict of Interest or Appearance of Fairness.

8.6.1 *If abstention removes quorum or majority.* Should the City Attorney determine that the participation of the Mayor or a Councilmember in discussion and voting on an issue would be a conflict of interest or appear to violate the appearance of fairness doctrine, or any specific part of chapter 42.36 RCW, that person shall abstain from further participation unless, as provided by RCW 42.36.090, a challenge to a member or members of the decision-making body would cause a lack of a quorum or would result in a failure to obtain a majority vote as required by law; in such cases, any challenged member(s) shall be permitted to fully participate in the proceedings and vote as though the challenge had not occurred if the member(s) publicly disclose the basis for disqualification prior to rendering a decision and each party has a full opportunity to present regarding the information relating to the issues. Such participation shall not subject the decision to a challenge by reason of violation of the appearance of fairness doctrine.

8.6.2 *Refusal to Abstain.* Should the Mayor or a Councilmember refuse to abstain from participation and voting on an issue after the City Attorney has determined that abstention is necessary, the challenged person may be disqualified from participating and voting on that issue upon a vote to disqualify that is passed by a majority of the other Councilmembers present who are eligible to vote on the underlying issue.

8.6.3 *Failure to Abstain.* Should the Mayor or a Councilmember fail to abstain from participation and voting on an issue where that officer knows or should have known that a conflict of interest is present or that the appearance of fairness would be compromised, such failure to abstain by the Mayor or Councilmember shall be presumed to constitute a lack of good faith for purposes of officer indemnity under RCW 4.96.041; provided that, nothing herein shall preclude the Council from determining that the Mayor or Councilmember acted in good faith upon a failure to abstain.

8.7 Failure to Vote. In the absence of an abstention on the basis of a conflict of interest, appearance of fairness, or other good cause, an abstention or failure to vote of a Councilmember present at the proceeding shall constitute an affirmative vote on the proposition or motion before the Council.

SECTION 9 – ORDINANCES AND RESOLUTIONS

9.1 Ordinances. All ordinances shall be reviewed by the City Attorney. No ordinance shall be prepared or presented to the Council unless requested by two members of the Council, the Chair of a Council Committee, the Mayor, or the City Administrator. Unless waived, all ordinances shall be in writing, and the titles thereof shall be read aloud by the Presiding Officer prior to a vote being called. A motion and a second are required to bring an ordinance to a vote.

In accordance with RCW 35A.12.120 and .130, an ordinance must be adopted by the affirmative vote of at least a majority of the whole membership of the Council, subject to the Mayor's approval and Council reconsideration of a mayoral veto; provided that, public emergency ordinances require an affirmative vote of at least a majority plus one of the whole membership of the Council. A public emergency ordinance is one designated to protect public health, public safety, public property, or public peace.

In accordance with RCW 35A.12.160, either the full text of the ordinance or a summary shall be published as soon as practicable in the City's designated official newspaper after adoption. An ordinance becomes effective five (5) days after publication unless otherwise specified in the ordinance or as required by law.

9.2 Resolutions. Resolutions may be prepared or presented to the Council at the request of two Councilmembers, the Chair of a Council Committee, the Mayor, or the City Administrator. All resolutions shall be in writing, and the titles thereof shall be read aloud by the Presiding Officer prior to a vote being called on their passage. A request for a full reading of a resolution need not be seconded.

Discussion and debate by the City Council on resolutions will be held prior to the vote on a resolution. Prior to voting on passage of a resolution, the

Council may decide by majority vote to amend the resolution or direct staff to review the proposed resolution and make a report to the Council.

A resolution must be passed by an affirmative vote of at least a majority of the whole membership of the Council; if passed, the resolution becomes effective immediately.

SECTION 10 – PUBLIC COMMENTS

- 10.1 Requesting to Speak. During the Public Comment period, members of the audience may comment on any matter related to City business. Persons addressing the Council who are not specifically scheduled on the agenda will be requested to fill out the speaker sign-in sheet at the City Clerk's desk, then step up to the podium, give their name and address for the record. All remarks must be addressed to the Council as a whole. The City Clerk shall serve as timekeeper. The Presiding Officer may make exceptions to the time restrictions when warranted. *See Subsection 3.5 for requests to make special presentations to the Council.*
- 10.2 Time Limit. Comments are limited to three (3) minutes per person. The Presiding Officer may adjust the time restrictions when warranted by special circumstances and after approval of a majority of Councilmembers present.
- 10.3 Advertising or Promoting Political Cause is Prohibited. Except as authorized or required by RCW 42.17A.555, no person may address the Council for the purpose of assisting a campaign for election of a person to any office or for the promotion of, or opposition to, any ballot proposition. Further, no person may address the Council for the purpose of advertising any item, service, or product for profit or otherwise.
- 10.4 Other Prohibited Remarks. Any person who causes actual disruption by making personal attacks, using hate speech, making slanderous remarks or other disruptive conduct while addressing the Council shall be barred from further participation by the Presiding Officer, unless permission to continue is granted by a majority vote of Councilmembers present.

SECTION 11 – LEGISLATIVE AND QUASI-JUDICIAL HEARINGS

- 11.1 Legislative Hearings. Legislative public hearings are held to obtain public input on legislative decisions on matters of policy and in some instances are required by state law.
 - 11.1.1 Before opening a legislative public hearing, the Presiding Officer shall state the hearing procedures.

- 11.1.2 The Department Director or the Director's designee shall present the issue to the Council and respond to questions.
- 11.1.3 A person may speak for up to five (5) minutes. A person may speak for up to ten (10) minutes if representing a group of two or more. No one may speak for a second time without the approval of the Presiding Officer, and only after everyone who wishes to speak has had an opportunity. The Presiding Officer may make exceptions to the time restrictions when warranted by the circumstances; provided that, the Council upon a motion and majority vote of Councilmembers present, may also make exceptions to the time restrictions or may overrule an exception granted by the Presiding Officer.
- 11.1.4 The City Clerk shall serve as timekeeper during legislative hearings.
- 11.1.5 After the speaker has used his or her allotted time, Councilmembers may ask questions of the speaker and the speaker may respond, but may not engage in further debate.
- 11.1.6 The hearing will then be closed to public participation and open for discussion among Councilmembers.
- 11.1.7 The Presiding Officer may request to change or modify the procedures at a particular meeting or hearing, but the decision to do so may be overruled by a majority vote of Councilmembers present.
- 11.1.8 When necessary in the interests of fairness or when required by circumstances, the hearing may be recessed and continued to a date certain upon approval by a majority vote of Councilmembers present.
- 11.2 Quasi-judicial Hearings. Quasi-judicial hearings involve the legal rights of specific parties and afford procedural due process, which may include receiving testimony, making a record of the evidence considered by the Council and issuing specific Council findings. The following procedures shall apply:
 - 11.2.1 Before opening a quasi-judicial hearing, the Presiding Officer shall state the hearing procedures.
 - 11.2.2 The Department Director of the department most affected by the subject matter of the hearing, or said Director's designee, shall be afforded fifteen (15) minutes to present the City's position and findings. City staff shall be available to respond to Council questions.
 - 11.2.3 The proponent or applicant spokesperson shall speak second and be allowed fifteen (15) minutes for presentation. The proponent may divide up the fifteen (15) minutes between more than one speaker and may

reserve time to be added to the maximum time for rebuttal. Council may ask questions.

- 11.2.4 The opponent spokesperson, if any, shall speak third and be allowed fifteen (15) minutes for presentation, may divide up the fifteen (15) minutes between more than one speaker, and may reserve time to be added to the maximum time for rebuttal. Council may ask questions.
- 11.2.5 Each side shall then be allowed five (5) minutes for rebuttal, with the proponent spokesperson speaking first, followed by the opponent spokesperson. Any time reserved from the speaker's presentation may be added to the five minute limit.
- 11.2.6 After the proponent and opponent have used their speaking time, ten (10) minutes shall be allowed for the Council to ask further questions of the speakers, who shall be entitled to respond but who must limit their response to the question asked.
- 11.2.7 The City Clerk shall serve as timekeeper during these hearings. By motion and majority vote of Councilmembers present, the Council may extend the times provided in this Subsection 11.2.
- 11.2.8 When necessary in the interests of fairness or when required by circumstances, the hearing may be recessed and continued to a date certain upon approval by a majority vote of Councilmembers present; provided that, the record is closed for the entire period of continuance and only Councilmembers who were present for the earlier portion of the hearing, or Councilmembers who have had the opportunity to consider the entirety of the record (verbatim transcript or audio and/or visual recording), may participate when the hearing resumes. Examples of reasons to allow a recess include, but are not limited to, absence of a necessary party due to illness or emergency; request for additional argument on an issue by a majority vote of the Council; inability to complete the hearing due to circumstances beyond the parties' control, such as power failure or natural disaster.
- 11.2.9 Consistent with RCW 42.30.140(2), the Council may consider the matter in an executive session or otherwise.
- 11.2.10 Except as otherwise allowed by law, after the Council has publicly considered the arguments and evidence presented, the Council shall then vote on the issue that was the subject of the hearing.

SECTION 12 – TOWN HALL MEETINGS

- 12.1 Purpose. Town Hall meetings provide a forum for Council members and community members to discuss City initiatives, emerging issues and community concerns, opinions and preferences regarding specific topics affecting the Black Diamond community, and for the City to respond to community questions. It is not the purpose of Town Hall meetings to take final action on any matter before the City Council.
- 12.2 Town Hall Agenda. The scheduling, agenda preparation and public comment period for Town Hall meetings shall conform to these Rules of Procedure, except that public comment may be limited to specific topics identified in the Town Hall meeting agenda. The speakers should limit their time to 10 minutes, to allow time for all speakers to speak. A second round of comment will be allowed, and speakers will be limited to three minutes. The Presiding Officer shall retain authority to impose rules of procedure to ensure open discussion during the Town Hall meeting, that people with opposing or different viewpoints receive an equal opportunity to speak, that everyone receive an opportunity to speak before any one speaker receives a second opportunity to speak, and that order and decorum is maintained. When necessary to ensure that everyone receive an opportunity to speak, the Presiding Officer shall retain authority to limit all persons' remarks to an equal period of time.
- 12.3 Staffing. City staff and the City Attorney shall not be required to attend Town Hall meetings unless otherwise directed by the Mayor; with the exception that, the City Clerk, or designee, shall attend Town Hall meetings for the purpose of keeping a journal of the minutes of the meeting and to act as the City Council's parliamentarian in the absence of the City Attorney.

SECTION 13 – MAYOR PRO TEMPORE SELECTION PROCESS

Annually at the first meeting of a new Council, the members thereof, by majority vote, shall designate one of their members as Mayor Pro Tempore for such period as the Council may specify. The Mayor Pro Tempore shall serve in the absence or temporary disability of the Mayor. In the event the Mayor Pro Tempore leaves, the Council shall, by a majority vote, designate one of the remaining Councilmembers as Mayor Pro Tempore.

SECTION 14 – SELECTING A COUNCIL MEMBER PRO TEMPORE OR FILLING A VACANT COUNCIL POSITION

- 14.1 Selecting a Councilmember Pro Tempore. In accordance with RCW 35A.12.065, in the event of extended excused absences or disability of a Councilmember, the remaining members by majority vote may appoint a Councilmember Pro Tempore to serve during the period of absence or disability.

- 14.2 Filling Vacant Council Position. In the event that an unexpired Council position becomes vacant, the City Council has ninety (90) days from the occurrence of the vacancy to appoint, by majority vote of a quorum of the Council, a qualified person to fill the vacancy in accordance with Chapter 42.12 RCW. The Council may make such appointment at its next regular meeting, or at a special meeting called for that purpose.

SECTION 15 – COUNCIL MEETING STAFFING

- 15.1 The City Administrator or the City Administrator's designee must attend all meetings of the Council, unless excused.
- 15.2 The City Attorney shall attend all meetings of the Council unless excused, and upon request, may provide comment, either written or oral, on legal questions. An assistant city attorney shall attend meetings when the City Attorney has been excused or is unable to attend due to illness or emergency.
- 15.3 It shall be the responsibility of each Department Head to ensure that a department representative or other City staff attend as necessary to present the department's agenda items to the Council and answer Council member questions.

SECTION 16 – COUNCIL RELATIONS WITH STAFF

- 16.1 The Mayor, City staff and Councilmembers shall respect the different roles each officer plays in a successful City and will strive to treat each other with courtesy and respect when questions, comments or criticism are expressed in a public meeting.
- 16.2 City staff will acknowledge the Council as policy makers, and the Councilmembers will acknowledge the Mayor and City staff as administrators of the Council's policies.
- 16.3 All written informational material requested of City staff by any individual Councilmember that the requesting Councilmember then intends to reference or introduce at a Council meeting shall be submitted or made available to all Councilmembers prior to being referenced or introduced at the meeting, unless other reasons preclude such distribution, in which case the reasons shall be communicated by the requesting Councilmember to the Mayor or the Mayor's designee and such reason provided to all Councilmembers.
- 16.4 Councilmembers shall not attempt to coerce or influence City staff in the administration of personnel, the awarding of contracts, the selection of consultants, the processing of development applications or purchases of City licenses or permits.

- 16.5 Councilmembers shall not attempt to change or interfere with the operating rules and practices of any City department.
- 16.6 No Councilmember shall direct the Mayor or City staff to initiate any action or prepare any report that is significant in nature, or initiate any project or study, without the consent of at least a majority of the whole membership of the Council.
- 16.7 Individual requests for information can be made directly to Department Directors unless otherwise determined by the Mayor. If the request would create a change in work assignments or City staffing levels, the request must be made through the Mayor.

SECTION 17 – APPOINTMENT BY MAYOR & CONFIRMATION BY CITY COUNCIL – WHEN REQUIRED

- 17.1 Mayor's Power to Appoint. In accordance with RCW 35A.12.090, the Mayor shall have the power of appointment and removal of all appointive officers and employees subject to any applicable law, rule, or regulation relating to civil service; provided that, in accordance with BDMC 2.08.020, each officer may hire any employee assigned to his or her department.
- 17.2 Confirmation by Council. In accordance with RCW 35A.12.090, confirmation by the City Council of mayoral appointments of officers and employees is required when City ordinance provides for the confirmation of such appointments. In addition, the City Council may require confirmation of mayoral appointments by the Council whenever the qualifications for the office or position have not been established by City ordinance.

SECTION 18 – COUNCIL COMMITTEES AND CITIZEN ADVISORY BOARDS

- 18.1 Council Standing Committees.
 - 18.1.1 *Establishment.* The City Council, by a majority vote of at least the whole membership of the Council, is authorized to establish Council Standing Committees to provide recommendations on major policy items to the City Council.
 - 18.1.2 *Mayoral Appointment/Council Confirmation.* The Mayor shall appoint the members of each Council Standing Committee with the Committee Chair appointed from the membership of the Council. Membership of any given committee may include no more than two (2) Councilmembers, including the Committee Chair. Annually at its first meeting in January, or as soon thereafter as practicable, the Council upon a majority vote of at least the whole membership of the Council shall confirm or decline the Mayor's appointments to Council Standing Committees.

18.1.3 *Agenda Setting/Proceedings.* The agenda setting and proceedings of each Council Standing Committee shall be as follows:

- a. The Committee Chair will work with the Mayor and City staff to finalize the agenda to help guide the direction of the meeting.
- b. If the Committee Chair is unable to attend a scheduled meeting, the remaining Councilmember member shall chair the meeting.
- c. In instances where a committee member cannot be present at a committee meeting, it is the responsibility of that member to contact an alternate Councilmember to attend in his or her place.
- d. Committees may forward issues with or without changes to staff for recommendation to the City Council. Reports on the activities of the committees may be given under the Council Reports section of the Council agenda by the Committee Chair.
- e. Matters forwarded from a Council Standing Committee to the City Council as a whole will remain at that level unless requested to be returned to Committee by a majority of the Council.
- f. Matters may be removed from Council Standing Committees and brought before the Council as a whole by a motion of the Council receiving an affirmative vote of at least a majority of the whole membership of the Council.
- g. Should a Council Standing Committee be split on whether a matter should be approved, the matter may move forward to Council without a recommendation. It is the Mayor's responsibility to bring matters before Council.
- h. Frequency of Council Standing Committee meetings shall be determined by the Mayor and Committee Chair
- i. Any direction from the Council Standing Committee for work to be performed by staff must be approved by the Mayor.
- j. Audience participation at a Council Standing Committee meeting is at the discretion of the Committee Chair.

18.1.4 *Standing Committees Authorized.* Standing Council committees may include, but shall not be limited to:

- a. *Budget/Finance/Administration Committee:* The Budget, Finance and Administration Committee, in conjunction with City Staff, may consider matters related to the financial issue of the City, including

the annual and capital budgets including revenues and expenditures, sales of bonds, general fiscal and financial conditions, voucher approval, rates and fees, audit and operations of the City, including but not limited to, facilities and properties computerization, periodic budget and financial reports, and policy matters related to personnel, in coordination with the finance and administration departments.

- b. *Parks/Cemetery Committee:* The Park and Cemetery Committee, in conjunction with City Staff, may consider matters related to planning and implementation of park and recreational facilities, capital improvement program, trails and cemetery.
- c. *Planning/Community Services Committee:* The Planning and Community Services Committee, in conjunction with City Staff, may consider matters of a non-quasi-judicial nature related to community growth and development, including but not limited to, planning of the physical, economic, aesthetic and social development of the City, comprehensive plan, zoning code, and housing, annexation policies, code enforcement. This committee may also consider matters not included in other committee's scopes of authority.
- d. *Public Safety Committee:* The Public Safety Committee, in conjunction with City Staff, may consider issues related to the public health, safety and welfare of the citizens of Black Diamond including but not limited to, law enforcement, fire safety, court, hazardous materials, animal control, special events and emergency services.
- e. *Public Works Committee:* The Public Works Committee, in conjunction with City Staff, may consider matters related to water, sewer, solid waste, recycling, utility franchises, storm water management, transportation, capital improvement program, transit, streets, street lighting, signalization and street local improvement.

18.2 Task Force Committees and Intergovernmental Groups.

- 18.2.1 The Mayor or a majority of the whole membership of the City Council may establish Task Force Committees on an *ad hoc* basis to consider matters that require a special approach or emphasis. Task Force Committees may be established and matters referred to them at Council study sessions. The Mayor shall appoint Council representatives to intergovernmental councils, boards and committees. Such appointments and their terms shall be communicated to the Council by the Mayor as soon as practical.

18.2.2 Task Force Committees shall consider all matters referred to them. The Chair of each Task Force Committee shall report the findings of the Committee to the Council. Committees may refer items to the Council with no Committee recommendation. Once the Committee's findings have been delivered to the Council, the Committee's duties shall be considered complete and the Committee dissolved, unless specifically re-tasked by the Council.

18.3 Advisory Boards, Committees and Commissions. Citizen advisory boards, committees and commissions may be established by ordinance from time to time, and shall consist of citizens appointed pursuant to the establishing ordinance and serving in the capacity and for the purposes indicated in the ordinance; such boards, commissions and committees shall act in an advisory capacity to the City Council.

SECTION 19 – SPEAKING WHEN REPRESENTING THE CITY COUNCIL

19.1 An Official City Position Requires a Public Vote. The City does not have an official position on any issue, whether the issue is political or non-political in nature, unless in accordance with RCW 42.17A.555, the City Council has taken a public vote and at least a majority of the whole membership of the Council votes to adopt the position. Failure of a majority of the Council to vote in favor of a position pursuant to RCW 42.17A.555 shall not constitute adoption of a contrary position; in such cases the City shall continue to have no official position on the issue.

19.2 Personal Opinions Must Be Distinguished From City Positions on an Issue.

19.2.1 *Speaking to persons about issues.* Whenever the Mayor or a Councilmember is speaking to a person or group of persons and the Councilmember expresses an opinion on an issue, whether the issue is political or non-political, the Mayor or Councilmember must clearly state whether the opinion represents the official position of the City of Black Diamond and its City Council, or whether it is only the speaker's personal opinion.

19.2.2 *Speaking on behalf of the City.* If the Mayor or a Councilmember appears on behalf of the City before another governmental agency, a community organization, or through the media, for the purpose of commenting on an issue, the Mayor or Councilmember must state the official position of the City Council, if known, on such issue. Personal opinions and comments which differ from those of the official position of the Council may be expressed only if the speaker clarifies that these statements do not represent the City Council's position.

- 19.2.3 *Expressing the views of other Councilmembers.* Prior to representing the position of an elected City official on an issue to the media, another government agency, a community organization, or members of the public, the Mayor and Councilmembers must have permission from that elected official; provided that, presenting how another elected official voted in an official public vote of the Council shall not require permission.

SECTION 20 – TRAVEL AUTHORIZATION

The City Council shall authorize and approve expenditures of city funds to pay for travel-related costs only in accordance with an adopted budget, and/or chapters 2.56 and 2.57 BDMC and/or the City's adopted administrative.

SECTION 21 CONFIDENTIALITY In General. Certain information is required to be kept confidential under state or federal law. The Mayor and Councilmembers must keep such information confidential when that information has been provided to them by City staff or otherwise becomes known to them during the performance of their duties in office. Confidential information includes, but is not limited to, certain personnel and employment information, certain information regarding pending labor and other contracts, and certain information regarding negotiations for the sale or purchase of property. It is the duty of the Mayor and each Councilmember to consult with the City Attorney should the official have a question about whether any particular information is confidential and may not be released.

- 21.2 Executive Sessions. The Mayor and Councilmembers must keep confidential all written materials and verbal information provided to them during Executive Sessions and may not provide them to persons not present during Executive Sessions, unless, after consultation with the City Attorney, such provision will not violate the confidentiality of Executive Session, or will not violate some other legal exemption or legal privilege..

City Council Rules of Procedure

Date of Adoption: _____

Resolution No. _____

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: AB15-013 Resolution No. 15-1010, authorizing a Maintenance & Supplies agreement with the Witt Company through their UB Bank financing of a sixty month lease agreement for the KYOCERA 7551 and 3551 copiers. Cost Impact (see also Fiscal Note): \$11,960 plus tax Fund Source: 2015 Budget Timeline:	Agenda Date: February 5, 2015	
	AB15-013	
	Mayor Carol Benson	
	City Administrator	
	City Attorney Carol Morris	
	City Clerk – Brenda L. Martinez	
	Com Dev/Nat Res – Aaron Nix	
	Finance – May Miller	X
	MDRT/Eco Dev – Andy Williamson	
	Police – Chief Kiblinger	
	Public Works – Seth Boettcher	
	Court – Stephanie Metcalf	
Agenda Placement: ☒ Mayor ☐ Two Councilmembers ☐ Committee Chair ☐ City Administrator		
Attachments: Resolution No. 15-1010, Copier Maintenance & Supplies and Lease Documents		
SUMMARY STATEMENT: The City Hall and Community Development copiers are entering their eighth year and have become less and less reliable with longer downtime periods and need to be replaced. Staff has reviewed copiers and has selected the Witt Company proposal to provide Maintenance and Supplies for two new Kyocera copiers through their U. S. Bank Leasing arrangement for a fixed monthly amount over the next five years. There is no extra cost to the city for the U. S. Bank billing arrangement. The city did not solicit bids, but instead used the allowed State Bid process and pricing The lease if for two new state of the art replacement copiers at approximately the same costs as our current Witt copier agreement. The lease includes the cost of supplies and maintenance of the copiers, delivery & training, clearing data and removal of old copier. The new copiers are faster and the per copy costs are less with the black and white copies cost reduced from .013 per copy to .007 and the color copies from .075 to .055. The Witt company will clean the current equipment's hard drives and provide the City with documentation that all confidential information has been removed. Not only will the city receive new copiers at approximately the same cost as our 8 year old copies, they are faster and have updated technology features. FISCAL NOTE (Finance Department): The cost new 60 month Lease is approximately the same as the current Witt Lease for our old copiers. The estimated cost of \$11,960 will be covered within the current 2015 budget based on the past number of copies per year.		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: The Finance Committee reviewed the proposed Copier Lease at their January 29, 2015 meeting and recommended approval.		
RECOMMENDED ACTION: MOTION to adopt Resolution No. 15-1010, authorizing a Maintenance and Supplies agreement with the Witt Company and their U. S. Bank agreement for a 60 month Lease of the Kyocera 7551 and 3551		

Copiers.

RECORD OF COUNCIL ACTION

<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
February 5, 2014		

RESOLUTION NO. 15-1010

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AUTHORIZING THE MAYOR TO EXECUTE A 60 MONTH
MAINTENANCE AND SUPPLIES AGREEMENT WITH THE
WITT COMPANY AND THE ASSOCIATED 60 MONTH
BILLING LEASE AGREEMENT THROUGH U. S. BANK
FOR THE KYOCERA TA 7551 ci & TA 3551 ci COPIERS**

WHEREAS, the current copiers at City Hall and Community Development have entered into their eighth year and have become less reliable with longer downtime periods and need to be replaced; and

WHEREAS, the cost to enter into a five year lease agreement for service and some supplies is approximately the same as our current service agreement costs; and

WHEREAS, the Witt Company has agreed to a base charge of \$11,960 that covers the cost of the 60 month lease, maintenance, toner and staples for the two copiers for a total of 264,00 black and white copies and 72,000 color copies. Any copies over this amount will be billed quarterly at .007 per copy for black and white, and .055 for color.

WHEREAS, the Will Company will clean the current equipment hard drive and provide the City with documentation that all confidential information has been removed; and

WHEREAS, the new copiers have updated technology features and will allow departments to scan in color and print at a higher rate of speed; and

WHEREAS, City staff has reviewed other copiers and selected Witt Company's proposal for a 60 months of service and some supplies through the State allowed bid process and contract pricing from the State KCDA contract 11.213. The Witt lease is billed through their U. S. bank arrangement at no extra cost to the city at a fixed monthly rate for five years. The new copiers will meet the needs of the city over the next five years, while providing the service and value the City requires;

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

Section 1. The Mayor is hereby authorized to enter into a 60 month lease agreement with the WITT Company for services and some supplies and with the U. S. Bank for the 60 month billing of the lease for the Kyocera TA 7551 ci & TA 3551 ci Copiers.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 5TH DAY OF FEBRUARY, 2015.

CITY OF BLACK DIAMOND:

Carol Benson, Mayor

Attest:

Brenda L. Martinez, City Clerk



MAINTENANCE and SUPPLIES

PO Box 900
Renton, WA 98057
Phone: (206)241-5401 Fax: (425)974-1815

P.O. # 1112010 DATE: 11/12/15

CUSTOMER INFORMATION Ship To:			
COMPANY NAME The City of Black Diamond			
ADDRESS		SUITE	
24031 Roberts Drive			
CITY	STATE	ZIP CODE	
Black Diamond	WA	98010	
PHONE #		FAX #	
306.886.5700			
EMAIL ADDRESS:		CONTACT NAME	
		May Miller	

CUSTOMER INFORMATION Bill To:			
COMPANY NAME Same			
ADDRESS		SUITE	
CITY	STATE	ZIP CODE	
PHONE #		FAX #	
EMAIL ADDRESS:		CONTACT NAME	

The Buyer agrees to acquire, under the plan initiated below, and The Witt-Company, Agrees to sell, in accordance with the terms and conditions of this agreement, the equipment and/or goods listed below.

QTY	ITEM #	DESCRIPTION	ID #	UNIT PRICE	TOTAL AMOUNT
1	TA 7551cl	Color MFP			
1	TA 3551cl	Color MFP			
1	DF 790	Finisher			
2	Punch 7A	Punch			
1	MT703	Bins			
1	Bk 730	Fold			
1	DP 770	DSDP			
1	PF 730	LCT			
1	DF 770	Finisher			
2	Fax V				
		Service and Supplies Inc. Toner, staples			
		Black 264,000 black .007			
		72,000 @ year Color .055			
		WRAP contract			
		Includes 5 year contract			
		US Bank lease payment 60 Payments of			
		996.68 plus tax.			
		Taxes are not included.			
		City to provide proof of insurance.			
		US Bank requires a non approp for the city			
		All terms and			
		conditions of the US Bank agreement			
		Apply.			

Trade-in
Buyout

CASH TERMS

NO TERMS OR CONDITIONS, EXPRESS OR IMPLIED, ARE AUTHORIZED UNLESS THEY APPEAR ON "ORIGINAL" OF THIS ORDER.

* TERMS: THE EQUIPMENT INDICATED ABOVE IS PURCHASED UNDER THE WITT-COMPANY STANDARD TERMS AS FOLLOWS:

1. IN THE EVENT BUYER DEFAULTS IN PAYMENT THE BUYER WILL BE LIABLE FOR THE PAYMENT OF ANY LEGAL FEES OR COSTS INCURRED IN SUSTAINING OR PROTECTING THE SECURITY INTEREST OR IN ENFORCING THE TERMS OF THE SECURITY AGREEMENT & UPON DEMAND THE BUYER AGREES TO MAKE THE EQUIPMENT AVAILABLE TO THE SELLER AT A LOCATION TO BE DETERMINED BY THE SELLER.

2. ADDITIONAL TERMS AND CONDITIONS ON REVERSE SIDE HEREOF ARE INCORPORATED HEREIN AND MADE PART OF THIS AGREEMENT

SUBTOTAL

INSTALL AND FREIGHT CHARGES

SUBTOTAL

STATE AND LOCAL TAXES

LESS DEPOSIT

TOTAL THIS ORDER

ADDITIONAL TERMS AND CONDITIONS

US Bank provides the lease and Witt Company
Kyocera provides services for 5 years per term
no increases to payment for term

ACCEPTED BY WITT-COMPANY

X

AUTHORIZED SIGNATURE REQUIRED

X

PRINTED NAME

ACCEPTED BY CUSTOMER

X

AUTHORIZED SIGNATURE REQUIRED

X

PRINTED NAME

5

Equipment Acquisition Agreement

THIS ORDER IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS

1. This order shall not be binding on Witt Company until approved at our office.
2. All shipments shall be F.O.B. our warehouse
3. Witt Company reserves the right to make delivery in installments. All such installments shall be separately invoiced and paid for when due, without regard to subsequent deliveries. Delay in delivery of an installment shall not relieve Buyer of its obligation to accept remaining installments.
4. Witt Company reserves the right at any time to revoke any credit extended to Buyer because of Buyer's failure to pay for any goods when due or for any reason deemed good and sufficient.
5. Witt Company shall not be liable for failure to deliver or delays in delivery occasioned by causes beyond Witt Company's control, including without limitation, strikes, lockouts, fires, embargoes, war or other outbreaks of hostilities, inability to obtain materials or shipping space, machinery breakdowns, delays of carrier or supplier, governmental acts and regulation, other causes beyond Witt Company's control and receipt of orders from all sources in excess of Witt Company's then scheduled production capacity.
3. **Witt Company warrants that the goods covered by this agreement when delivered to buyer will be of merchantable quality and free from material defects in workmanship and material for a period of 90 days from the date of delivery by Witt Company under ordinary use and conditions. Witt Company will repair, or at Witt Company's option replace any item of the goods which does not conform to the foregoing warranty and the cause of the nonconformity does not arise from or relate to modification, misuse or abuse by the customer, if a warranty claim, stating in writing and with reasonable particularity the claimed nonconformity, is delivered to Witt Company within the 90 day period. All warranties and remedies other than those set forth above, whether they be express or implied by law or arising from course of dealing or usage of trade, and specifically including but not limited to the warranties of merchantability and fitness for a particular purpose and the remedy of consequential damages, are excluded.**
7. All claims for goods or delay in delivery shall be deemed waived unless made in writing delivered to Witt Company within ten days after receipt of goods by Buyer.
3. Title to all goods and equipment shall remain with Witt Company until such time as the purchase price thereof shall have been paid in full.
3. Witt Company shall have a security interest in all goods and equipment delivered to Buyer until the purchase price for same shall have been paid in full. At the request of Witt Company, Buyer shall execute and deliver a security agreement and/or financing statements in the form or forms submitted to Buyer by Witt Company.
10. Customer agrees to provide suitable electric service for the operation of the equipment.
11. Customer agrees to make available an operator for training purposes in the use of the equipment. Customer also agrees to notify Witt Company of any change in operator assignment.
12. All paper, chemicals and toner used to operate the equipment installed hereunder, shall meet or exceed manufacturer's specifications. Customer acknowledges that it understands that it is not a condition of the Agreement that it use only manufacturer's paper, chemicals or toner.
13. This agreement shall be governed by and construed in accordance with the laws of the State of Oregon and exclusive venue of any action arising out of this agreement shall be in Washington County, Oregon, unless this agreement has been entered into in the State of Washington, in which case, it shall be governed and construed in accordance with the laws of the State of Washington and exclusive venue of any action arising out of this agreement shall be in King County, Washington.
14. Customer agrees to provide proper access to the equipment, so that Witt Company service personnel can properly service the machine.
15. **This contract is a complete, unambiguous and exclusive statement of the terms of the agreement between the parties and is intended to supersede and replace all prior or contemporaneous writings and oral agreements and understandings and to prevail over any course of dealing or usage of the trade inconsistent with any express term contained herein. Any and all representations, promises, warranties, or statements by Witt Company representative that differ in any way from the terms of this written agreement shall be given no force or effect. The terms of this agreement may be modified or terminated only by a writing signed by the buyer and an officer of Witt Company.**
16. In the event either party commences legal action, including arbitration, under this agreement, or if either party is required to file a claim or take action under this agreement in a bankruptcy proceeding, the prevailing party shall be entitled to recover its reasonable attorney fees and costs incurred, including expert witness fees, to be determined by the trial court, arbitrator, or bankruptcy court, as the case may be, and if any appeal is taken, such further sum as may be fixed by the appellate court as the prevailing party's reasonable attorney fees on appeal. If this agreement is placed in the hands of an attorney for collection, the buyer agrees to pay Witt Company actual attorney fees and other expenses incurred, whether or not legal action has been commenced.
17. The parties hereby waive and relinquish any and all claims to the effect that forbearance or indulgence by one party as to any failure or refusal of performance constitutes a waiver of the obligation or grounds for a claim of estoppel with respect thereto.



Value Lease Agreement

APPLICATION NO.

AGREEMENT NO.

EQUIPMENT FINANCE

Send Account Inquiries to: 1310 Madrid Street, Suite 101 • Marshall, MN 56258 • Phone: (800) 328-5371 • Fax: (800) 328-9092

Send Payments to: P.O. Box 790448 • St. Louis, MO 63179-0448

The words Lessee, you and your refer to Customer. The words Lessor, we, us and our refer to U.S. Bank Equipment Finance, a division of U.S. Bank National Association ("U.S. Bank Equipment Finance").

CUSTOMER INFORMATION

FULL LEGAL NAME			STREET ADDRESS	
City of Black Diamond			24301 Roberts Drive	
CITY	STATE	ZIP	PHONE	FAX
Black Diamond	WA	98101	360.886.5700	
BILLING NAME (IF DIFFERENT FROM ABOVE)			BILLING STREET ADDRESS	
CITY	STATE	ZIP	E-MAIL	
EQUIPMENT LOCATION (IF DIFFERENT FROM ABOVE)				

SUPPLIER INFORMATION

NAME OF SUPPLIER			STREET ADDRESS	
Witt Company			850 SW 7th Street, Suite 100	
CITY	STATE	ZIP	PHONE	FAX
Renton	WA	98057	800 777-0852	425 974-1815

EQUIPMENT DESCRIPTION

MAKE/MODEL/ACCESSORIES	SERIAL NO.	STARTING METER
Kyocera TA 7551 ci		
Kyocera TA 3551 ci		

together with all replacements, parts, repairs, additions, and accessions incorporated therein or attached thereto and any and all proceeds of the foregoing, including, without limitation, insurance recoveries.

☐ See the attached Schedule A☐ See the attached Billing Schedule

TERM AND PAYMENT SCHEDULE

Term in 60 Months Payments* of \$ 996.68 **plus applicable taxes*

The lease contract payment ("Payment") period is monthly unless otherwise indicated.

Payment includes 22,000	B&W Pages per month	Overages billed quarterly at \$.007	per B&W page*
Payment includes 6,000	Color Pages per month	Overages billed quarterly at \$.055	per Color page*

By initialing here, you agree that service and supplies are not included in this Agreement.

END OF LEASE OPTIONS

You may choose one of the following options within the area you check and initial at the end of the original term, provided that no event of default under the Agreement has occurred and is continuing. If no box is checked and initialed, then Fair Market Value will be your end of lease option. Leases with \$1.00 or \$101.00 purchase options will not be renewed. To the extent that any purchase option indicates that the purchase price will be the "Fair Market Value" (or "FMV"), such term means the value of the Equipment in continued use.

- ☒ 1) Purchase all but not less than all the Equipment for the Fair Market Value per paragraph 1, 2) Renew the Agreement per paragraph 1, or 3) Return the Equipment per paragraph 3.
- ☐ 1) Purchase the Equipment for \$1.00, or 2) Return the Equipment per paragraph 3.

____ Customer's Initials
____ Customer's Initials

THIS IS A NONCANCELABLE / IRREVOCABLE AGREEMENT; THIS AGREEMENT CANNOT BE CANCELED OR TERMINATED.

LESSOR ACCEPTANCE

U.S. Bank Equipment Finance

LESSOR

SIGNATURE

TITLE

DATED

CUSTOMER ACCEPTANCE

By signing below, you certify that you have reviewed and do agree to all terms and conditions of this Agreement on this page and on page 2 attached hereto.

CUSTOMER (as referenced above)

SIGNATURE

TITLE

DATED

FEDERAL TAX I.D. #

PRINT NAME

ACCEPTANCE OF DELIVERY

You certify that all the Equipment listed above has been furnished, that delivery and installation has been fully completed and is satisfactory. Upon you signing below, your promises herein will be irrevocable and unconditional in all respects. You understand that we have purchased the Equipment from the supplier, and you may contact the supplier for a full description of any warranty rights under the supply contract, which we hereby assign to you for the term of this Agreement (or until you default). Your approval as indicated below of our purchase of the Equipment from the supplier is a condition precedent to the effectiveness of this Agreement.

CUSTOMER (as referenced above)

SIGNATURE

TITLE

DATE OF DELIVERY

Equipment Acquisition Agreement

THIS ORDER IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS

1. This order shall not be binding on Witt Company until approved at our office.
2. All shipments shall be F.O.B. our warehouse
3. Witt Company reserves the right to make delivery in installments. All such installments shall be separately invoiced and paid for when due, without regard to subsequent deliveries. Delay in delivery of an installment shall not relieve Buyer of its obligation to accept remaining installments.
4. Witt Company reserves the right at any time to revoke any credit extended to Buyer because of Buyer's failure to pay for any goods when due or for any reason deemed good and sufficient.
5. Witt Company shall not be liable for failure to deliver or delays in delivery occasioned by causes beyond Witt Company's control, including without limitation, strikes, lockouts, fires, embargoes, war or other outbreaks of hostilities, inability to obtain materials or shipping space, machinery breakdowns, delays of carrier or supplier, governmental acts and regulation, other causes beyond Witt Company's control and receipt of orders from all sources in excess of Witt Company's then scheduled production capacity.
6. **Witt Company warrants that the goods covered by this agreement when delivered to buyer will be of merchantable quality and free from material defects in workmanship and material for a period of 90 days from the date of delivery by Witt Company under ordinary use and conditions. Witt Company will repair, or at Witt Company's option replace any item of the goods which does not conform to the foregoing warranty and the cause of the nonconformity does not arise from or relate to modification, misuse or abuse by the customer, if a warranty claim, stating in writing and with reasonable particularity the claimed nonconformity, is delivered to Witt Company within the 90 day period. All warranties and remedies other than those set forth above, whether they be express or implied by law or arising from course of dealing or usage of trade, and specifically including but not limited to the warranties of merchantability and fitness for a particular purpose and the remedy of consequential damages, are excluded.**
7. All claims for goods or delay in delivery shall be deemed waived unless made in writing delivered to Witt Company within ten days after receipt of goods by Buyer.
8. Title to all goods and equipment shall remain with Witt Company until such time as the purchase price thereof shall have been paid in full.
9. Witt Company shall have a security interest in all goods and equipment delivered to Buyer until the purchase price for same shall have been paid in full. At the request of Witt Company, Buyer shall execute and deliver a security agreement and/or financing statements in the form or forms submitted to Buyer by Witt Company.
10. Customer agrees to provide suitable electric service for the operation of the equipment.
11. Customer agrees to make available an operator for training purposes in the use of the equipment. Customer also agrees to notify Witt Company of any change in operator assignment.
12. All paper, chemicals and toner used to operate the equipment installed hereunder, shall meet or exceed manufacturer's specifications. Customer acknowledges that it understands that it is not a condition of the Agreement that it use only manufacturer's paper, chemicals or toner.
13. This agreement shall be governed by and construed in accordance with the laws of the State of Oregon and exclusive venue of any action arising out of this agreement shall be in Washington County, Oregon, unless this agreement has been entered into in the State of Washington, in which case, it shall be governed and construed in accordance with the laws of the State of Washington and exclusive venue of any action arising out of this agreement shall be in King County, Washington.
14. Customer agrees to provide proper access to the equipment, so that Witt Company service personnel can properly service the machine.
15. **This contract is a complete, unambiguous and exclusive statement of the terms of the agreement between the parties and is intended to supersede and replace all prior or contemporaneous writings and oral agreements and understandings and to prevail over any course of dealing or usage of the trade inconsistent with any express term contained herein. Any and all representations, promises, warranties, or statements by Witt Company representative that differ in any way from the terms of this written agreement shall be given no force or effect. The terms of this agreement may be modified or terminated only by a writing signed by the buyer and an officer of Witt Company.**
16. In the event either party commences legal action, including arbitration, under this agreement, or if either party is required to file a claim or take action under this agreement in a bankruptcy proceeding, the prevailing party shall be entitled to recover its reasonable attorney fees and costs incurred, including expert witness fees, to be determined by the trial court, arbitrator, or bankruptcy court, as the case may be, and if any appeal is taken, such further sum as may be fixed by the appellate court as the prevailing party's reasonable attorney fees on appeal. If this agreement is placed in the hands of an attorney for collection, the buyer agrees to pay Witt Company actual attorney fees and other expenses incurred, whether or not legal action has been commenced.
17. The parties hereby waive and relinquish any and all claims to the effect that forbearance or indulgence by one party as to any failure or refusal of performance constitutes a waiver of the obligation or grounds for a claim of estoppel with respect thereto.

1. **AGREEMENT:** For business purposes only, you agree to lease from us the goods (the "Equipment") and/or to finance certain licensed software and services ("Financed Items", which are included in the word "Equipment" unless separately stated), all as described on page 1 of this Agreement, as it may be supplemented from time to time. You agree to all of the terms and conditions contained in this Agreement and any supplement, which (with the acceptance certification) is the entire agreement regarding the Equipment ("Agreement") and which supersedes any purchase order or invoice. You authorize us to correct or insert missing Equipment identification information and to make corrections to your proper legal name. This Agreement becomes valid upon execution by us. If service and supplies are not included, this Agreement will start on the date we pay the supplier and interim rent/due date adjustments will be in an amount equal to 1/30th of the Payment, multiplied by the number of days between the Agreement start date and the first Payment due date. This Agreement will renew for 12-month term(s) unless you purchase or return the Equipment (according to the conditions herein) or send us written notice between 90 and 150 days (before the end of any term) that you do not want it renewed. If any provision of this Agreement is declared unenforceable in any jurisdiction, the other provisions herein shall remain in full force and effect in that jurisdiction and all others.

2. **RENT, TAXES AND FEES:** You will pay the monthly Payment (as adjusted) when due, plus any applicable sales, use and property taxes. The base Payment will be adjusted proportionately upward or downward: (1) by up to 10% to accommodate changes in the actual Equipment cost; (2) if the shipping charges or taxes differ from the estimate given to you; and (3) to comply with the tax laws of the state in which the Equipment is located. If we pay any taxes, insurance or other expenses that you owe hereunder, you agree to reimburse us when we request and to pay us a processing fee for each expense or charge we pay on your behalf. We may charge you for any filing fees required by the Uniform Commercial Code (UCC) or other laws, which fees vary state-to-state. By the date the first Payment is due, you agree to pay us an origination fee, as shown on our invoice or addendum, to cover us for all closing costs. We will have the right to apply all sums, received from you, to any amounts due and owed to us under the terms of this Agreement. If for any reason your check is returned for nonpayment, you will pay us a bad check charge of \$30 or, if less, the maximum charge allowed by law. We may make a profit on any fees, estimated tax payments and other charges paid under this Agreement.

3. **MAINTENANCE AND LOCATION OF EQUIPMENT; SECURITY INTEREST:** At your expense, you agree to keep the Equipment: (1) in good repair, condition and working order, in compliance with applicable manufacturers' and regulatory standards; (2) free and clear of all liens and claims; and (3) only at your address shown on page 1, and you agree not to move it unless we agree. As long as you have given us the written notice as required in paragraph 1 prior to the expiration or termination of this Agreement's term, if you do not purchase the Equipment, you will return all but not less than all of the Equipment and all related manuals and use and maintenance records to a location we specify, at your expense, in retail re-saleable condition, full working order and complete repair. You are solely responsible for removing any data that may reside in the Equipment you return, including but not limited to hard drives, disk drives or any other form of memory. You grant us a security interest in the Equipment to secure all amounts you owe us under any agreement with us, and you authorize us to file a financing statement (UCC-1). You will not change your state of organization, headquarters or residence without providing prior written notice to us so that we may amend or file a new UCC-1. You will notify us within 30 days if your state of organization revokes or terminates your existence.

4. **COLLATERAL PROTECTION; INSURANCE; INDEMNITY; LOSS OR DAMAGE:** You agree to keep the Equipment fully insured against risk and loss, with us as lender's loss payee, in an amount not less than the original cost until this Agreement is terminated. You also agree to obtain a general public liability insurance policy with such coverage and from such insurance carrier as shall be satisfactory to us and to include us as an additional insured on the policy. Your insurance policy(s) will provide for 10 days advance written notice to us of any modification or cancellation. You agree to provide us certificates or other evidence of insurance acceptable to us. If you fail to comply with this requirement within 30 days after the start of this Agreement, you agree to pay a monthly property damage surcharge ("PDS") of up to .0035 of the Equipment cost as a result of our credit risk and administrative and other costs, under the PDS program that is further described on a letter from us to you. We may make a profit on this program. Under this program, AS LONG AS YOU ARE NOT IN DEFAULT AT THE TIME OF A LOSS (excluding losses from intentional acts), the remaining balance owed on the subject Equipment will be forgiven. NOTHING IN THIS PARAGRAPH WILL RELIEVE YOU OF RESPONSIBILITY FOR LIABILITY INSURANCE ON THE EQUIPMENT. We are not responsible for, and you agree to hold us harmless and reimburse us for and to defend on our behalf against, any claim for any loss, expense, liability or injury caused by or in any way related to delivery, installation, possession, ownership, use, condition, inspection, removal, return or storage of the Equipment. You are responsible for the risk of loss or for any destruction of or damage to the Equipment. You agree to promptly notify us in writing of any loss or damage. If the Equipment is destroyed and you do not have the PDS program you will pay to us the unpaid balance of this Agreement, including any future rent to the end of the term plus the anticipated purchase price of the Equipment (both discounted at 3%). Any proceeds of insurance will be paid to us and credited, at our option, against any loss or damage. You authorize us to sign on your behalf and appoint us as your attorney-in-fact to endorse in your name any insurance drafts or checks issued due to loss or damage to the Equipment. All indemnitees will survive the expiration or termination of this Agreement.

5. **ASSIGNMENT:** YOU HAVE NO RIGHT TO SELL, TRANSFER, ASSIGN OR SUBLEASE THE EQUIPMENT OR THIS AGREEMENT, without our prior written consent. Without our prior written consent, you shall not reorganize or merge with any other entity or transfer all or a substantial part of your ownership interests or assets. We may sell, assign, or transfer this Agreement without notice. You agree that if we sell, assign or transfer this Agreement, the new Lessor will have the same rights and benefits that we have now and will not have to perform any of our obligations. You agree that the new Lessor will not be subject to any claims, defenses, or offsets that you may have against us. You shall cooperate with us in executing any documentation reasonably required by us or our assignee to effectuate any such assignment. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns.

6. **DEFAULT AND REMEDIES:** You will be in default if: (a) you do not pay any Payment or other sum due to us or any other person when due or if you break any of your promises in this Agreement or any other agreement with us or any of our affiliates or any material agreement with any other lender; (b) you make or have made any false statement or misrepresentation to us; (c) you or any guarantor dies, dissolves or terminates existence; (d) there has been a material adverse change in your or any guarantor's financial, business or operating condition; or (e) any guarantor defaults under any guaranty for this Agreement. If any part of a Payment is more than 5 days late, you agree to pay a late charge of 10% of the Payment which is late or if less, the maximum charge allowed by law. If you are ever in default, at our option, we can terminate this Agreement and require that you pay the unpaid balance of this Agreement, including any future Payments to the end of the term plus the anticipated purchase price of the Equipment (both discounted at 3%). We may recover default interest on any unpaid amount at the rate of 12% per year. Concurrently and cumulatively, we may also use any or all of the remedies available to us under Articles 2A and 9 of the UCC and any other law, including requiring that you: (1) return the Equipment to us to a location we specify; and (2) immediately stop using any Financed Items. In addition, we will have the right, immediately and without notice or other action, to set-off against any of your liabilities to us any money, including depository account balances, owed by us to you, whether or not due. In the event of any dispute or enforcement of rights under this Agreement or any related agreement, you agree to pay our reasonable attorney's fees (including any incurred before or at trial, on appeal or in any other proceeding), actual court costs and any other collection costs, including any collection agency fee. If we have to take possession of the Equipment, you agree to pay the costs of repossession, moving, storage, repair and sale. The net proceeds of the sale of any Equipment will be credited against what you owe us under this Agreement. YOU AGREE THAT WE WILL NOT BE RESPONSIBLE TO PAY YOU ANY CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES FOR ANY DEFAULT, ACT OR OMISSION BY ANYONE. Any delay or failure to enforce our rights under this Agreement will not prevent us from enforcing any rights at a later time. You agree that your rights and remedies are governed exclusively by this Agreement. You waive all rights under Article 2A (508-522) of the UCC. If interest is charged or collected in excess of the maximum lawful rate, we will not be subject to any penalties.

7. **INSPECTIONS AND REPORTS:** We will have the right, at any reasonable time, to inspect the Equipment and any documents relating to its use, maintenance and repair. Within 30 days after our request, you will deliver all requested information (including tax returns) which we deem reasonably necessary to determine your current financial condition and faithful performance of the terms hereof. This may include: (i) compiled, reviewed or audited annual financial statements (including, without limitation, a balance sheet, a statement of income, a statement of cash flow, a statement of changes in equity and notes to financial statements) within 120 days after your fiscal year end; and (ii) management-prepared interim financial statements within 45 days after the requested reporting period(s). Annual statements shall set forth the corresponding figures for the prior fiscal year in comparative form, all in reasonable detail without any qualification or exception deemed material by us. Unless otherwise accepted by us, each financial statement submitted to us shall be prepared in accordance with generally accepted accounting principles consistently applied and shall fairly and accurately present your financial condition and results of operations for the period to which it pertains.

8. **FAXED OR SCANNED DOCUMENTS, MISC.:** You agree to submit the original duly-signed documents to us via overnight courier the same day of the facsimile or scanned transmission of the documents. Any faxed or scanned copy may be considered the original, and you waive the right to challenge in court the authenticity or binding effect of any faxed or scanned copy or signature thereon. You agree to execute any further documents that we may request to carry out the intents and purposes of this Agreement. All notices shall be mailed or delivered by facsimile transmission or overnight courier to the respective parties at the addresses shown on this Agreement or such other address as a party may provide in writing from time to time. By providing any telephone number, now or in the future, for a cell phone or other wireless device, you are expressly consenting to receiving communications, regardless of their purpose, at that number, including, but not limited to, prerecorded or artificial voice message calls, text messages, and calls made by an automatic dialing system from us and our affiliates and agents. These calls and messages may incur access fees from your provider.

9. **WARRANTY DISCLAIMERS:** YOU AGREE THAT YOU HAVE SELECTED THE SUPPLIER AND EACH ITEM OF EQUIPMENT BASED UPON YOUR OWN JUDGMENT AND YOU DISCLAIM ANY RELIANCE UPON ANY STATEMENTS OR REPRESENTATIONS MADE BY US. WE DO NOT TAKE RESPONSIBILITY FOR THE INSTALLATION OR PERFORMANCE OF THE EQUIPMENT. THE SUPPLIER IS NOT AN AGENT OF OURS AND WE ARE NOT AN AGENT OF THE SUPPLIER, AND NOTHING THE SUPPLIER STATES OR DOES CAN AFFECT YOUR OBLIGATION UNDER THIS AGREEMENT. YOU WILL CONTINUE TO MAKE ALL PAYMENTS UNDER THIS AGREEMENT REGARDLESS OF ANY CLAIM OR COMPLAINT AGAINST ANY SUPPLIER, LICENSOR OR MANUFACTURER, AND ANY FAILURE OF A SERVICE PROVIDER TO PROVIDE SERVICES WILL NOT EXCUSE YOUR OBLIGATIONS TO US UNDER THIS AGREEMENT. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, OF, AND TAKE ABSOLUTELY NO RESPONSIBILITY FOR, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, CONDITION, QUALITY, ADEQUACY, TITLE, DATA ACCURACY, SYSTEM INTEGRATION, FUNCTION, DEFECTS, OR ANY OTHER ISSUE IN REGARDS TO THE EQUIPMENT, ANY ASSOCIATED SOFTWARE AND ANY FINANCED ITEMS.

10. **LAW, JURY WAIVER:** Agreements, promises and commitments made by Lessor, concerning loans and other credit extensions must be in writing, express consideration and be signed by Lessor to be enforceable. This Agreement may be modified only by written agreement and not by course of performance. This Agreement will be governed by and construed in accordance with Minnesota law. You consent to jurisdiction and venue of any state or federal court in Minnesota and waive the defense of inconvenient forum. For any action arising out of or relating to this Agreement or the Equipment, YOU AND WE WAIVE ALL RIGHTS TO A TRIAL BY JURY.

11. **MAINTENANCE AND SUPPLIES:** The charges established by this Agreement include payment for the use of the Equipment, accessories, maintenance by supplier during normal business hours, inspection, adjustment, parts replacement, drums, cleaning material required for proper operation and black toner and developer. Paper and staples must be separately purchased by you. Color toner is not included in this Agreement and will be billed separately. If necessary, the service and supply portion of this Agreement may be assigned by us. We may charge you a supply freight fee to cover our costs of shipping supplies to you.

12. **OVERAGES AND COST ADJUSTMENTS:** You agree to comply with our billing procedures including, but not limited to, providing us with periodic meter readings on the Equipment. At the end of the first 12 months after commencement of this Agreement, and once each successive 12-month period thereafter, we may increase the Payment and the "cost per page" charge that exceeds the number of pages originally designated in this Agreement ("Overages") by a maximum of 18% of the existing "cost per page" charge.

13. **UPGRADE AND DOWNGRADE PROVISION:** AFTER COMMENCEMENT OF THE AGREEMENT AND UPON YOUR WRITTEN REQUEST, AT OUR SOLE DISCRETION, WE MAY REVIEW YOUR PAGE VOLUME AND PROPOSE OPTIONS FOR UPGRADING OR DOWNGRADING THE EQUIPMENT TO ACCOMMODATE YOUR BUSINESS NEEDS.

14. **TRANSITION BILLING:** In order to facilitate an orderly transition, including installation and training, and to provide a uniform billing cycle, the start date of this Agreement (the "Effective Date") will be a date after the certification of acceptance of the Equipment, as shown on the first invoice. The payment for this transition period will be based on the base minimum usage payment, prorated on a 30-day calendar month, and will be added to your first monthly Payment.



EQUIPMENT FINANCE

STATE AND LOCAL GOVERNMENT ADDENDUM

AGREEMENT

Addendum to Agreement # _____, dated _____, between _____, as Customer and U.S. Bank Equipment Finance, a division of U.S. Bank National Association, as Lessor.

The parties wish to amend the above-referenced Agreement by adding the following language:

REPRESENTATIONS AND WARRANTIES OF CUSTOMER: You hereby represent and warrant to us that: (a) you have been duly authorized by the Constitution and laws of the applicable jurisdiction and by a resolution of your governing body to execute and deliver this Agreement and to carry out your obligations hereunder; (b) all legal requirements have been met, and procedures have been followed, including public bidding, in order to ensure the enforceability of this Agreement; (c) this Agreement is in compliance with all laws applicable to you, including any debt limitations or limitations on interest rates or finance charges; (d) the Equipment will be used by you only for essential governmental or proprietary functions of you consistent with the scope of your authority, will not be used in a trade or business of any person or entity, by the federal government or for any personal, family or household use, and your need for the Equipment is not expected to diminish during the term of this Agreement; (e) you have funds available to pay contracted Payments until the end of your current appropriation period, and you intend to request funds to make contracted Payments in each appropriation period, from now until the end of the term of this Agreement; and (f) your exact legal name is as set forth on page one of this Agreement.

NON-APPROPRIATION OR RENEWAL: If either sufficient funds are not appropriated to make contracted Payments or any other amounts due under this Agreement or (to the extent required by applicable law) this Agreement is not renewed, this Agreement shall terminate and you shall not be obligated to make contracted Payments under the Agreement beyond the then-current fiscal year for which funds have been appropriated. Upon such an event, you shall, no later than the end of the fiscal year for which contracted Payments have been appropriated, deliver possession of the Equipment to us. If you fail to deliver possession of the Equipment to us, the termination shall nevertheless be effective but you shall be responsible, to the extent permitted by law and legally available funds, for the payment of damages in an amount equal to the portion of contracted Payments thereafter coming due that is attributable to the number of days after the termination during which you fail to deliver possession and for any other loss suffered by us as a result of your failure to deliver possession as required. You shall notify us in writing within seven days after your failure to appropriate funds sufficient for the payment of the contracted Payments or (to the extent required by applicable law) this Agreement is not renewed, but failure to provide such notice shall not operate to extend the Agreement term or result in any liability to you.

TITLE TO THE EQUIPMENT: If the selected purchase option for this Agreement is \$1.00 or \$101.00, unless otherwise required by law, upon your acceptance of the Equipment, title to the Equipment shall be in your name, subject to our interest under this Agreement.

The parties wish to amend the above-referenced Agreement by restating the following language:

Any provision in the Agreement stating this Agreement supersedes any invoice and/or purchase order is hereby amended and restated as follows: "You agree that the terms and conditions of the Agreement and any supplement or schedule thereto and any related acceptance certificate constitutes the entire agreement regarding the financing or lease of the Equipment and supersedes any purchase order, invoice, request for proposal or other related document."

Any provision in the Agreement stating that the Agreement shall automatically renew unless the Equipment is purchased, returned or a notice requirement is satisfied is hereby amended and restated as follows: "This Agreement will renew for month-to-month terms unless you purchase or return the Equipment (according to the conditions herein) or send us written notice at least 30 days (before the end of any term) that you do not want it renewed."

Any provision in the Agreement stating that we may assign this Agreement is hereby amended and restated as follows: "We may sell, assign, or transfer this Agreement without notice to or consent from you, and you waive any right you may have to such notice or consent."

Any provision in the Agreement stating that you grant us a security interest in the Equipment to secure all amounts owed to us under any agreement is hereby amended and restated as follows: "To the extent permitted by law, you grant us a security interest in the Equipment to secure all amounts you owe us under this Agreement, and you authorize us to file a UCC-1 financing statement or be named on the vehicle title to show our interest."

Any provision in the Agreement stating that you shall indemnify and hold us harmless is hereby amended and restated as follows: "You shall not be required to indemnify or hold us harmless against liabilities arising from the Agreement. However, as between you and us, and to the extent permitted by law and legally available funds, you shall bear the risk of loss for, shall pay directly, and shall defend against any and all claims, liabilities, proceedings, actions, expenses, damages or losses arising under or related to the Equipment, including, but not limited to, the possession, ownership, lease, use or operation thereof, except that you shall not bear the risk of loss of, nor pay for, any claims, liabilities, proceedings, actions, expenses, damages or losses that arise directly from events occurring after you have surrendered possession of the Equipment in accordance with the terms of the Agreement to us or that arise directly from our gross negligence or willful misconduct."

Any provision in the Agreement stating that a default by you under any agreement with our affiliates or other lenders shall be an event of default under the Agreement is hereby amended and restated as follows: "You will be in default if: (i) you do not pay any Payment or other sum due to us under the Agreement when due or if you fail to perform in accordance with the covenants, terms and conditions of this Agreement, (ii) you make or have made any false statement or misrepresentation to us, (iii) you dissolve, terminate your existence or file bankruptcy, or (iv) there has been a material adverse change in your financial, business or operating condition."

Any provision in the Agreement stating that you shall pay our attorneys' fees is hereby amended and restated as follows: "In the event of any dispute or enforcement of rights under this Agreement or any related agreement, you agree to pay, to the extent permitted by law and to the extent of legally available funds, our reasonable attorneys' fees (including any incurred before or at trial, on appeal or in any other proceeding), actual court costs and any other collection costs, including any collection agency fee."

Any provision in the Agreement requiring you to pay amounts due under the Agreement upon the occurrence of a default, failure to appropriate funds or failure to renew the Agreement is hereby amended to limit such requirement to the extent permitted by law and legally available funds.

Any provision in the Agreement stating that the Agreement is governed by a particular state's laws and you consent to such jurisdiction and venue is hereby amended and restated as follows: "This Agreement will be governed by and construed in accordance with the laws of the state where you are located. You consent to jurisdiction and venue of any state or federal court in such state and waive the defense of inconvenient forum."

By signing this Addendum, Customer acknowledges the above changes to the Agreement and authorizes Lessor to make such changes. In all other respects, the terms and conditions of the Agreement remain in full force and effect and remain binding on Customer.

U.S. Bank Equipment Finance

Lessor

Signature

Title

Date

_____
Customer

_____
Signature

_____
Title

Date

NOTE: SIGNER OF THIS DOCUMENT MUST BE SAME AS ON THE AGREEMENT. A FACSIMILE OF THIS DOCUMENT WITH SIGNATURE SHALL BE CONSIDERED TO BE AN ORIGINAL. CAPITALIZED TERMS IN THIS DOCUMENT ARE DEFINED AS IN THE AGREEMENT, UNLESS SPECIFICALLY STATED OTHERWISE.

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: AB15-014 Resolution No. 15-1011, authorizing a contract with RH2 for Water Comprehensive Plan update assistance	Agenda Date: February 5, 2015	
	AB15-014	
	Mayor Carol Benson	
	City Administrator	
	City Attorney Carol Morris	
	City Clerk – Brenda L. Martinez	
	Com Dev/Nat Res – Aaron Nix	
	Finance – May Miller	
	MDRT/Ec Dev – Andy Williamson	
Cost Impact (see also Fiscal Note): \$70,500	Police – Chief Kiblinger	
Fund Source: --CIP \$80,000 2015 budget	Public Works – Seth Boettcher	X
Timeline: December 2015	Court – Stephanie Metcalf	
Agenda Placement: ☒ Mayor ☐ Two Councilmembers ☐ Committee Chair ☐ City Administrator		
Attachments: Resolution No. 15-1011, contract, Capital budget sheet		
SUMMARY STATEMENT: Background The Department of Health requires that the City update the City water comprehensive plan every 6 years. The last water system comprehensive plan update was approved late in 2009. The City has met with the Department of Health (DOH) and has scoped the effort according to state law and the requirements of DOH. The Department of Health will allow a 10 year cycle for the next water comprehensive plan update, if the City analyzes a 10 year outlook on growth, capital and finance needs. The proposed scope includes a 10 year update so that the City can save approximately \$100,000 in the future on water system planning costs. FISCAL NOTE (Finance Department): In the City's capital planning effort the City has set aside \$135,000 over 2015/2016 (\$80,000 in 2015) to fund the water comprehensive plan update. City staff will be covering about half of the task efforts for the completion of the comprehensive plan. The City could consider shifting 2016 budget funds to 2015 if the water comprehensive plan progress moves along expeditiously if needed.		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: Public Works Committee recommends approval.		
RECOMMENDED ACTION: MOTION to adopt Resolution No. 15-1011, authorizing the Mayor to execute a contract with RH2 Engineering, Inc. not to exceed \$70,700 for assistance with the City's Water Comprehensive Plan Update.		
RECORD OF COUNCIL ACTION		
Meeting Date	Action	Vote
February 5, 2015		

RESOLUTION NO. 15-1011

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AUTHORIZING THE MAYOR TO EXECUTE A
PROFESSIONAL SERVICES AGREEMENT WITH RH2
ENGINEERING, INC. FOR ASSISTANCE WITH THE
WATER COMPREHENSIVE PLAN UPDATE**

WHEREAS, the Department of Health requires that the City update its water comprehensive plan every six years and the water comprehensive plan update is due; and

WHEREAS, the City has planned and budgeted for the Water Comprehensive Plan Update; and

WHEREAS, the City does not have sufficient staff resources to complete all aspects of the Water Comprehensive Plan Update; and

WHEREAS, RH2 Engineering, Inc. was competitively selected as the City's on-call water engineering consultant;

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

Section 1. The Mayor is hereby authorized to execute a contract with RH2 Engineering, Inc. for assistance with the City's Water Comprehensive Plan Update, substantially in the form attached hereto.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 5TH DAY OF FEBRUARY, 2015.

CITY OF BLACK DIAMOND:

Carol Benson, Mayor

Attest:

Brenda L. Martinez, City Clerk

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF BLACK DIAMOND AND
RH2 ENGINEERING, INC.**

THIS AGREEMENT is made by and between the City of Black Diamond, a Washington municipal corporation (hereinafter the "City"), and RH2 ENGINEERING, INC., (hereinafter the "Consultant,") a corporation organized under the laws of the State of Washington, located and doing business at 22722 29th Drive SE, Suite 210, Bothell, WA 98021.

RECITALS

WHEREAS, the City does not have sufficient staff resources to complete all work associated with the Water Comprehensive Plan Update; and

WHEREAS, the Consultant has agreed to provide engineering services related to the Water Comprehensive Plan Update as described herein;

WHEREAS, the City has advertised for on-call water and sewer engineering services and has selected RH2 Engineering, Inc. as the most qualified;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

TERMS

I. Description of Work.

The Consultant shall perform all work described in Exhibit A, which is attached hereto and incorporated herein by this reference.

II. Payment

A. The City shall pay the Consultant an amount based on time and materials according to the list of billing rates and reimbursable expenses attached hereto as Exhibit C. The total amount of services under this contract shall not exceed seventy thousand seven hundred Dollars (\$70,700.00) as estimated in exhibit B for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in Exhibit A, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount.

B. The Consultant shall submit monthly invoices to the City after such services have been performed, and a final bill upon completion of all the services described in this Agreement. The City shall pay the full amount of an invoice within sixty (60) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

III. Relationship of Parties

The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Consultant is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or sub-consultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the Consultant is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or sub-consultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and sub-consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

IV. Duration of Work

The City and the Consultant agree that work will begin on the tasks described in Exhibit A immediately upon execution of this Agreement. The parties agree that the work described in Exhibit A shall be completed by December 31, 2015; provided however, that additional time shall be granted by the City for excusable days or extra work.

V. Termination

A. Termination of Agreement. The City may terminate this Agreement, for public convenience, the Consultant's default, the Consultant's insolvency or bankruptcy, or the Consultant's assignment for the benefit of creditors, at any time prior to completion of the work described in Exhibit A. If delivered to Consultant in person, termination shall be effective immediately upon the Consultant's receipt of the City's written notice or such date stated in the City's notice, whichever is later.

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Consultant to the effective date of termination, as described on a final invoice submitted to the City. Said amount shall not exceed the

amount in Section II above. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this Agreement, which records and data may be used by the City without restriction. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise.

VI. Discrimination

In the hiring of employees for the performance of work under this Agreement or any sub-contract hereunder, the Consultant, its Subcontractors, or any person acting on behalf of such Consultant or sub-consultant shall not by reason of race, religion, color, sex, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

VII. Indemnification

The Consultant shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal Costs and attorneys' fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The City's inspection or acceptance of any of the Consultant's work when completed shall not be grounds to avoid any of these covenants of indemnification.

Should a court of competent jurisdiction determine that this Agreement is Subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, agents and Volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER. THE CONSULTANT'S WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO. ANY CLAIMS BY THE CONSULTANT'S EMPLOYEES DIRECTLY AGAINST THE CONSULTANT.

The provisions of this section shall survive the expiration or termination of this Agreement.

VIII. Insurance

A. The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Consultant's own work including the work of the Consultant's agents, representatives, employees, sub-consultants or sub-contractors.

B. Before beginning work on the project described in this Agreement, the Consultant shall provide evidence, in the form of a Certificate of Insurance, of the following insurance coverage and limits (at a minimum):

1. Business auto coverage for any auto no less than a \$1,000,000 each accident limit, and

2. Commercial General Liability insurance no less than \$1,000,000 per occurrence with a \$2,000,000 aggregate. Coverage shall include, but is not limited to, contractual liability, products and completed operations, property damage, and employers liability, and

3. Professional Liability insurance with no less than \$1,000,000. All policies and coverage's shall be on a claims made basis.

C. The Consultant is responsible for the payment of any deductible or self-insured retention that is required by any of the Consultant's insurance. If the City is required to contribute to the deductible under any of the Consultant's insurance policies, the Contractor shall reimburse the City the full amount of the deductible within ten (10) working days of the City's deductible payment.

D. The City of Black Diamond shall be named as an additional insured on the Consultant's commercial general liability policy. This additional insured endorsement shall be included with evidence of insurance in the form of a Certificate of Insurance for coverage necessary in Subsection B. The City reserves the right to receive a certified and complete copy of all of the Consultant's insurance policies.

E. Under this agreement, the Consultant's insurance shall be considered primary in the event of a loss, damage or suit. The City's own comprehensive general liability policy will be considered excess coverage with respect to defense and indemnity of the City only and no other party. Additionally, the Consultant's commercial general liability policy must provide cross-liability coverage as could be achieved under a standard ISO separation of insured's clause.

F. The Consultant shall request from his insurer a modification of the ACORD certificate to include language that prior written notification will be given to the City of Black Diamond at least thirty (30) days in advance of any cancellation, suspension or material change in the Consultant's coverage.

IX. Exchange of Information

The City warrants the accuracy of any information supplied by it to the Consultant for the purpose of completion of the work under this Agreement. The parties agree that the Consultant will notify the City of any inaccuracies in the information provided by the City as may be discovered in the process of performing the work, and that the City is entitled to rely upon any information supplied by the Consultant which results as a product of this Agreement.

X. Ownership and Use of Records and Documents

Original documents, drawings, designs and reports developed under this Agreement shall belong to and become the property of the City. All written information submitted by the City to the Consultant in connection with the services performed by the Consultant under this Agreement will be safeguarded by the Consultant to at least the same extent as the Consultant safeguards like information relating to its own business. If such information is publicly available or is already in Consultant's possession or known to it, or is rightfully obtained by the Consultant from third parties, the Consultant shall bear no responsibility for its disclosure, inadvertent or otherwise.

XI. City's Right of Inspection

Even though the Consultant is an independent contractor with the authority to control and direct the performance, and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

XII. Consultant to Maintain Records to Support Independent Contractor Status

On the effective date of this Agreement (or shortly thereafter), the Consultant shall comply with all federal and state laws applicable to Independent contractors including, but not limited to the maintenance of a separate set of books and records that reflect all items of income and expenses of the Consultant's business, pursuant to the Revised Code of Washington (RCW) Section 51.08.195, as required to show that the services performed by the Consultant under this Agreement shall not give rise to an employer-employee relationship between the parties which is subject to RCW Title 51, Industrial Insurance.

XIII. Work Performed at the Consultant's Risk

The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of the work

hereunder and shall utilize all protection necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held by the Consultant for use In connection with the work.

XIV. Non-Waiver of Breach

The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances, shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options and the same shall be and remain in full force and effect.

XV. Resolution of Disputes and Governing Law

Should any dispute, misunderstanding, or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the City of Black Diamond shall determine the term or provision's true intent or meaning. The City of Black Diamond shall also decide all questions which may arise between the parties relative to the actual services provided or to the sufficiency of the performance hereunder.

If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the Mayor or Administrator's determination in a reasonable time, or if the Consultant does not agree with the City's decision on the disputed matter, jurisdiction of any resulting litigation shall be filed in King County Superior Court, King County, Washington. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The non-prevailing party in any action brought to enforce this Agreement shall pay the other parties' expenses and reasonable attorney's fees.

XVI. Written Notice

All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the agreement, unless notified to the contrary. Unless otherwise specified, any written notice hereunder shall become effective upon the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated below:

CONSULTANT:

Attn: Geoff Dillard
RH2 Engineering, Inc.
22722 29th Drive SE, Suite 210
Bothell, WA 98021

CITY:

Attn: Seth Boettcher
City of Black Diamond
P.O. Box 599
24301 Roberts Drive
Black Diamond, WA 98010

With a copy to the "City Clerk" at the same address.

XVII. Assignment

Any assignment of this Agreement by the Consultant without the written consent of the City shall be void. If the City shall give its consent to any assignment, this paragraph shall continue in full force and effect and no further assignment shall be made without the City's consent.

XVIII. Modification and Severability

No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and the Consultant.

The provisions of this Agreement are declared to be severable. If any provision of this Agreement is for any reasons held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other provision.

XIX. Entire Agreement

The written provisions and terms of this Agreement, together with any Exhibits attached hereto shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever, this Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and any Exhibits attached hereto, which may or may not have been executed prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

IN WITNESS WHEREOF, the parties have executed this Agreement on this ____ day of _____, 2015.

CONSULTANT

CITY OF BLACK DIAMOND

By: _____
Its

By: _____
Carol Benson, Mayor

Consultant: _____

APPROVED AS TO FORM:

City Attorney's Office

ATTEST:

City Clerk

Exhibit A
City of Black Diamond
Comprehensive Water System Plan Update Assistance
SCOPE OF WORK
November 24, 2014

This Scope of Work includes tasks necessary to for RH2 Engineering, Inc., (RH2) update the City of Black Diamond's (City) Comprehensive Water System Plan (WSP) and evaluate the ability of the City's water system to meet the needs of existing and projected future water system customers throughout the 20-year planning period. This Scope of Work is based on published regulatory requirements for comprehensive water system plans and on the kick-off meeting with Department of Health (DOH) on November 7, 2014.

Available resources from the previous planning work (Last WSP prepared by PacWest Engineering, LLC in 2008) will be utilized to reduce the level of effort necessary for this WSP update. In addition, we understand that City staff will be undertaking a large number of the task necessary to complete this plan update. To reduce redundancy in effort, RH2 will rely on the accuracy and completeness of any data, information, or materials provided by the City or others in relation to the work. It is anticipated that the City will contract directly with its own financial consultant to prepare the financial analysis.

NOTE: It is anticipated that task items that are *italicized* will be accomplished by City staff and should only require a minimal amount of effort to complete (e.g., already completed as part of 2008 WSP or other ongoing efforts). *Non-italicized task items* will be accomplished by RH2 and are included in the attached Fee Estimate.

ACTIVITY 1 – INTRODUCTION AND EXISTING WATER SYSTEM DESCRIPTION

Task:

1. *Coordinate with City staff during the data collection process. This includes coordination with City staff over the telephone and reviewing data provided by the City.*
2. *Describe the water system ownership and management. Include the system type, system ID number, address, and contact person.*
3. *Describe the authorization and purpose of the plan, and provide a summary of the plan contents*
4. *Provide a definition of terms and list of abbreviations used in the plan.*
5. *Review previous plans, existing system information and data, and facility as-builts.*
6. *Provide a brief overview of the history of the water system from information provided in the previous plan. Include the current numbers of existing and approved service connections.*
7. *Describe the physical characteristics of the existing water service area and its effects on water system planning including topography, geology, sensitive areas and flood zones.*

8. *Describe the City's existing and future service areas including the Urban Growth Area and water service agreements. Include the City's plans for expanding the current service area.*
9. *Summarize the City's current position on being a Satellite Management Agency and discuss the potential impacts of the program on the City.*
10. *Provide a brief overview of the operation of the existing water system.*
11. *Describe each pressure zone and all existing facilities including sources of supply, booster pump stations, pressure reducing stations, pipelines, reservoirs, interties, and telemetry and supervisory control.*
12. *Provide a table of water main inventory that includes total lengths, diameters, materials, and age, based on available data.*
13. *Review adjacent water systems and provide a brief description of the adjacent water systems' and the potential for emergency and seasonal interties.*
14. *Prepare color figures of the following:*
 - *Existing Water System*
 - *Existing System Hydraulic Profile*
 - *Service Area and Adjacent Systems*

ACTIVITY 2 - LAND USE AND POPULATION

Task:

1. *Prepare an inventory of related plans and review each to provide a summary of the impacts on the water system. Include the County Land Use Plan, Coordinated Water System Plan, and the Growth Management Act (GMA) impacts on the City.*
2. *Identify existing and future land use patterns and their impacts on existing and future facilities for the water system.*
3. *Identify current and projected housing trends and household sizes within the City's service area, based on available information from the City staff and from County and State population data.*
4. *Include a table of 6-year, 10-year, and 20-year population projections that comply with the Growth Management Act.*
5. *Include a color figure of the following:*
 - *City Land Use*
 - *County Land Use*
 - *City Zoning*
 - *County Zoning*

ACTIVITY 3 - WATER DEMANDS

Task:

1. RH2 and City staff to meet and discuss water availability protocols. City will include updated criteria and procedures to be used for issuing Certificates of Water Availability, in accordance with GMA.
2. Tabulate yearly totals of metered consumption for each customer class and the average number of accounts in service for each year from 2008 through 2014.
3. Tabulate the ten largest water users and the total water use of each for the year 2014.
4. Tabulate yearly totals of water production from each supply facility from 2008 through 2014.
5. Calculate per capita demands based on the average day demand and population data from 2008 through 2014.
6. Calculate the number of equivalent residential units (ERU's) within the system based on the water consumption and supply data.
7. Identify the distribution system loss (DSL) by analyzing the differences between billing consumption records and supply records.
8. Calculate the approximate demand by pressure zone.
9. Calculate the system average day demand based on the yearly water supply data from 2008 through 2014.
10. Review available telemetry and field records for the supply and storage facilities and compute the system's maximum day demand (MDD) and peak hour demand (PHD).
11. Prepare a table of general fire flow requirements of each land use classification and identify buildings with the largest fire flow requirements within the service area.
12. Document the historical demands from 2008 through 2014.
13. Develop 1 through 20-year demand projections based on projected population data and historical per capita demands. Demand projections shall be tabulated with and without additional water use reductions from conservation.

ACTIVITY 4 - POLICIES AND DESIGN CRITERIA

Task:

1. Review and evaluate existing City standards pertaining to water department policies and criteria. Make recommendations on potential updates and modifications.

2. *Identify existing policies and recommend additional policies or revise as necessary to ensure that future City facilities meet minimum and acceptable design standards and criteria. Use State Department of Health, Environmental Protection Agency, American Water Works Association, and standard engineering practices as the bases for identifying facility construction policies, criteria, and requirements.*
3. *Summarize each policy and design criteria.*
4. Review City construction standards and make recommendations on potential updates and modifications.
5. *Discuss the City's existing construction standards and include a copy in the appendix.*

ACTIVITY 5 - WATER SOURCE AND QUALITY

Task:

1. *Provide a detailed description of the existing water sources and treatment.*
2. Summarize the results of recent water supply studies, recommendations and planned improvements. This shall include the recently completed corrosion control improvements for the spring sources.
3. Summarize the current water rights in the City using records provided by the City.
4. Perform a water rights evaluation that compares current water rights with existing and projected demands.
5. Provide an overview of existing and future drinking water regulations, the Safe Drinking Water Act (SDWA), and the Endangered Species Act (ESA). Describe the impacts of the regulations on the City.
6. Identify the water quality monitoring requirements for the City's water system.
7. *Summarize the results and compliance status of recent source and distribution system water quality monitoring.*

ACTIVITY 6 – WATER SYSTEM ANALYSES

Task:

1. Examine each of the existing pressure zones and identify areas of low and high pressures. Include a table showing each existing zone, the maximum and minimum service elevation and service pressures (at static conditions).
2. Calculate the quantity of water supply required for the existing and future conditions and compare to the existing supply capability of the system.
3. Identify and describe supply facility deficiencies.

4. Calculate the quantity of water storage required for the existing and future system and compare to the existing storage capacity of the system. Identify and briefly describe storage deficiencies.
5. Update the hydraulic model to verify the input data and facility settings. Add pipe material and year data into the model. Calibrate the model with flow and pressure test data measured in the field.
6. Using the hydraulic model of the City's water system, perform a steady-state hydraulic analysis of the system simulating a peak hour demand condition with no fire flows to determine the pressures and flow distribution during this demand condition.
7. Perform a steady-state fire flow analysis for each node in the system while simulating peak day demands to determine the capability of the existing system to provide adequate flows and pressures and to identify existing system deficiencies.
8. Input future demand data into the hydraulic model's nodes using the results from the future water demand evaluation. Demand distribution shall be based on estimates of future growth allocations.
9. Based on the results of the existing system hydraulic analysis and identification of deficiencies, identify and input proposed water system improvements into the model.
10. Perform a steady-state fire flow analysis for each node in the system while simulating future peak day demands to verify that the proposed improvements eliminate existing system deficiencies and are sized properly to accommodate anticipated growth based on meeting the policies and design criteria of the City. Repeat the analyses until all existing system deficiencies have been eliminated.
11. Prepare a table that summarizes the results of the existing system and future system fire flow analyses.
12. Identify and describe distribution system deficiencies and the results of the hydraulic analyses.
13. Evaluate the City's existing telemetry and supervisory control system and identify deficiencies.
14. Perform a "System Capacity" analysis of the existing system to determine the unused available system capacity, expressed in ERU's. Document the criteria and results of the analysis.
15. Meet with City staff to discuss the system analyses, deficiencies, and recommended improvements.

ACTIVITY 7 - OPERATIONS AND MAINTENANCE

Task:

1. *Document the current water staff organization and prepare an organizational chart.*
2. *Prepare a table listing all water operations personnel, their position, and certification.*

3. *Provide a brief description of the key responsibilities of the water operations personnel.*
4. *Provide a list of all major equipment, supplies, and chemicals used by the water system.*
5. *Document the current operations and maintenance programs and suggest operational improvements to improve reliability and service, and identify their associated cost impacts.*
6. *Comment on the general impacts and effects of changing water quality requirements regarding operations and maintenance responsibilities.*
7. *Identify safety procedures that must be followed for potential work place hazards.*
8. *Identify procedures for keeping and compiling records and reports. Provide a list of records on file and identify where they are filed.*
9. *Identify maintenance schedules for each facility.*
10. *Evaluate staffing requirements and document recommendations.*
11. *Identify operations and maintenance improvements.*

ACTIVITY 8 – WATER SYSTEM IMPROVEMENTS

Task:

1. *Briefly describe water system improvements that have been completed since the last comprehensive plan update.*
2. *Prepare a list of proposed water system improvements based on the results of the existing system and proposed system analyses. Briefly describe each group of related improvements and the purpose/benefit of the improvements.*
3. *Prepare an approximate cost estimate for each improvement based on current industry prices.*
4. *Coordinate with City staff and establish criteria for prioritizing and scheduling improvements. Prioritization and scheduling to consider other scheduled projects based on information provided by the City.*
5. *Schedule all improvements based on the criteria established above in previous tasks.*
6. *Prepare a table of improvements that includes an improvement identification number, a brief description of each improvement, the associated cost estimate, and the scheduling of the improvements on an annual basis for the 6-year, 10-year, and 20-year planning period.*
7. *Describe the criteria and procedures used for prioritizing and scheduling improvements.*
10. *Prepare color figures of the following:*

- *Proposed Water System Improvements* (overall map prepared by City with pipe overlay from RH2)
- *Proposed Improvements Hydraulic Profile*

11. Meet with City staff to discuss the water system improvements and proposed schedule of implementation.

ACTIVITY 9 - CROSS-CONNECTION CONTROL PLAN

Task:

1. *Review the City's existing cross-connection control ordinance and other available program information.*
2. *Coordinate with the City to discuss the cross-connection control requirements contained in WAC 246-290-490 and identify the type of program that is desired by the City.*
3. *Document the responsibility of each City department for implementing the program and their relationship with one another and outside agencies.*
4. *Identify the primary and backup staff positions delegated the responsibility for the organization and implementation of the cross-connection control program.*
5. *Identify the qualifications required for personnel working in the cross-connection control program.*
6. *Document procedures and schedules for prioritizing and conducting surveys of existing facilities to identify all existing and potential cross-connections.*
7. *Document procedures and schedules for evaluating new service connections to assess for potential cross-connections.*
8. *Document procedures and schedules for prioritizing and implementing the elimination or control of cross-connections.*
9. *Document guidelines for assessing the degree of hazard and selection of appropriate backflow assemblies.*
10. *Document standard requirements for installation and testing of approved backflow assemblies.*
11. *Describe the record keeping system requirements for the cross-connection control program.*
12. *Describe the methods or processes that will provide information (public education, etc.) regarding the cross-connection control program to the existing and future system customers.*
13. *Document procedures for responding to backflow incidents.*

ACTIVITY 10 - EMERGENCY RESPONSE PLAN

This activity is limited to tasks accomplished in the office and is not intended to fulfill the vulnerability assessment and emergency response planning requirements imposed by the 2002 Bioterrorism Response Act.

Task:

1. *Identify, in ranked order, water system personnel responsible for making decisions in emergency situations. Include job titles, phone numbers, and water system responsibilities and expertise.*
2. *Describe procedures for quickly notifying system customers, the public, the local health department, and DOH of water quality emergencies.*
3. *Briefly describe the vulnerability assessment that the City will be undertaking in 2003 or 2004 to comply with the Federal requirements.*
4. *Identify a contingency plan for responding to potential emergency events for each facility.*
5. *Identify design criteria for future improvements to minimize seismic vulnerability.*
6. *Provide the following tables, each integrated with the chapter text:*
 - *Water System Personnel Emergency Call-up List*
 - *Water System Support Services Call-up List*
 - *Emergency Notification Contact List*
 - *Priority Customers Contact List*

ACTIVITY 11 – WATER QUALITY MONITORING PLAN

Task:

1. *Update the description of the water system, as required by the DOH Coliform Monitoring Plan requirements.*
2. *Document source water quality monitoring requirements and procedures.*
3. *Document distribution system water quality monitoring requirements and procedures, including a schedule for coliform monitoring.*
4. *Provide the following tables, each integrated with the chapter text:*
 - *Pressure Zones*
 - *Water Sources*
5. *Water Storage*
 - *Pressure Reducing Stations*
 - *Coliform Monitoring Schedule*

6. *Prepare a color figure of the following:*
 - *Coliform Monitoring Locations*

ACTIVITY 12 – WATER SOURCE PROTECTION PLAN

Task:

1. *Prepare a summary of the State's Water Source Protection Program and regulatory requirements.*
2. *Document the City's past efforts towards protection of its water sources and include a summary of the results of the wellhead protection study ongoing since 1998.*
3. *Document water quality trends from past records of source water quality monitoring.*
4. *Document the results of the City's susceptibility assessment in the mid-1990's and the monitoring waivers that were granted.*
5. *Update the inventory of potential contaminant sources within the delineated areas using available databases maintained by DOE and EPA, and document the results of the inventory findings.*
6. *Update the list of owners and operators of known and potential sources of water contamination, businesses, regulatory agencies and local governments, emergency response agencies, and City customers that must be notified of the City's source protection program.*
7. *Document normal system operation and a contingency plan for operating the water system in the event of contamination of one of the City's sources or other source related emergency.*
8. *Document implementation of the Water Source Protection Program and provide recommendations.*
9. *Provide the following tables, each integrated with the chapter text:*
 - *Potential Sources of Contamination*
 - *Notification Recipients*
10. *Prepare a color figure of the following showing the existing water system, watershed protection areas, and areas of known and potential sources of water contamination:*
 - *Source Protection Areas*

ACTIVITY 13 – WATER USE EFFICIENCY PLAN

Task:

1. *Describe the recently implemented Water Use Efficiency Rule and its impact on the City. Prepare a summary of recent regional water use efficiency planning efforts.*
2. *Document the City's past water use efficiency efforts.*

3. Evaluate the reduction in water use from implementation of water use efficiency efforts during the past 6 years and describe the water use efficiency improvements.
4. Describe the previous water use efficiency efforts that will be discontinued, if any. Identify why the continuation of these efforts would be ineffective or discuss the program's prescribed end date or savings level.
5. Assist the City in establishing water use efficiency goals through a public process as required by the Water Use Efficiency Rule.
6. Identify and evaluate water use efficiency measures for appropriateness and cost-effectiveness.
7. Prepare a water use efficiency program that includes goals and objectives; evaluation and selection of alternative measures; descriptions of selected measures; and estimates of water use savings for each measure. Update information from the 2005 WSP.
8. Expand the evaluation of water use efficiency measures to include an analysis of the cost effectiveness of the measures and the effect that the costs have on the selection of measures. Determine if the measures will be cost-effective if the costs are shared with other entities.
9. Describe the approach to monitoring and evaluation of the water use efficiency measures to ensure that they remain economical and effective. Develop an annual reporting process to document progress.
10. Complete the Water Reclamation Checklist per the Municipal Water Law.
11. Prepare a schedule for implementation of the water use efficiency measures and cost estimates for each measure.
12. Develop a Water Loss Control Action Plan since distribution system leakage is greater than 10 percent. Include water loss control methods that will be implemented, an estimated schedule for achieving the distribution system leakage standard, a budget for the program, and identification of technical or economic concerns that may prevent the City from meeting the distribution system leakage standard.

ACTIVITY 14 - FINANCIAL ANALYSIS

Task:

1. *Document the past financial performance of the water utility and develop an itemized 3-year summary (2000-2002) of system revenue and expenses.*
2. *Document the long-term debt of the City's water utility.*
3. *Describe the existing water rates and connection charges and anticipated future rates and charges.*

4. *Describe financing of system improvements in the past and planned financing in the future.*
5. *Identify the anticipated annual revenue for the 6-year planning period.*
6. *Identify the anticipated annual expenses for the 6-year planning period.*
7. *Prepare a table that summarizes the anticipated revenue and expenses and capital funding balance before and after the capital improvement expenditures for the 6-year planning period.*
8. *Prepare a table of improvements from the water system improvements activity that identifies the costs of improvements for the 6-year planning period and the planned source of financing.*
9. *Document the results of the financial analysis.*

ACTIVITY 15 - APPENDICES

Task:

1. *Obtain SEPA Checklist and Determination of Non-Significance (DNS) to be prepared by the City and include in the appendix.*
2. *Obtain from the City all service area and intertie agreements and include in the appendix.*
3. *Obtain copies of applicable City ordinances and include in the appendix.*
4. *Include copy of Water Facilities Inventory (WFI) Forms.*
5. *Include copy of City construction standards.*
6. *Include copy of water right certificates and permits.*

ACTIVITY 16 – WSP REVIEW

Task:

1. *Review WSP after it has been prepared in draft form by the City.*

At the completion of Activities 1 - 21, the Plan will be in a final format, ready for review by the regulatory agencies and adjacent water purveyors. The number of comments, number of meetings, and amount of required Plan modifications from the review of the regulatory agencies and adjacent water purveyors are difficult to predict. Therefore, RH2 Engineering will prepare a separate scope of work and fee estimate to address review comments, review meetings, and final Plan modifications upon receipt of all review comments from the County, Departments of Ecology and Health, and the adjacent cities and water districts.

Estimate of Time and Expense

10/20/2015 11:23 AM

EXHIBIT C
RH2-ENGINEERING, INC.
SCHEDULE OF RATES AND CHARGES

2015 HOURLY RATES

CLASSIFICATION		RATE	CLASSIFICATION		RATE
Professional	IX	\$208.00	Technician	IV	\$134.00
Professional	VIII	\$208.00	Technician	III	\$126.00
Professional	VII	\$199.00	Technician	II	\$94.00
			Technician	I	\$89.00
Professional	VI	\$184.00			
Professional	V	\$176.00	Administrative	V	\$125.00
Professional	IV	\$166.00	Administrative	IV	\$105.00
			Administrative	III	\$90.00
Professional	III	\$155.00	Administrative	II	\$75.00
Professional	II	\$146.00	Administrative	I	\$63.00
Professional	I	\$134.00			

IN-HOUSE SERVICES

In-house copies (each)	8.5" X 11"	\$0.09	CAD Plots	Large	\$25.00
In-house copies (each)	8.5" X 14"	\$0.14	CAD Plots	Full Size	\$10.00
In-house copies (each)	11" X 17"	\$0.20	CAD Plots	Half Size	\$2.50
In-house copies (color) (each)	8.5" X 11"	\$0.90	CAD System	Per Hour	\$27.50
In-house copies (color) (each)	8.5" X 14"	\$1.20	GIS System	Per Hour	\$27.50
In-house copies (color) (each)	11 X 17"	\$2.00	Technology Charge	2.5% of Direct Labor	
			Mileage	Current IRS Rate	

OUTSIDE SERVICES

Outside direct costs for permits, fees, reports, maps, data, reprographics, computer expenses, and non-mileage related travel expenses that are necessary for the execution of the project and are not specifically identified elsewhere in the contract will be invoiced at cost.

All Subconsultant services are billed at cost, plus 15%.

CHANGE IN RATES

Rates listed here are adjusted annually. The current schedule of rates and charges is used for billing purposes. Payment for work accomplished shall be based on the hourly rates and expenses in effect at the time of billing as stated on this Exhibit.

Capital Plan 2015 - 2020

Project for the **Water Department** **# W6**

PROJECT TITLE **Water Comprehensive Plan Update** **14.12**

DESCRIPTION The Department of Health requires an update of the Water Comprehensive Plan every 6 years. The City is due to update the Water Comprehensive Plan in 2015.

COMMENTS The Public Works Department will update the Water Comprehensive Plan primarily with in house staff with assistance from an outside consultant for water system modeling and system mapping.

	Total \$ Requested 2015-2020	Capital Plan 2015 - 2020					
		2015	2016	2017	2018	2019	2020
CAPITAL PROJECT COSTS							
Management / Administration	10,000	5,000	5,000				
Consultant Services	70,000	40,000	30,000				
in house engineering	55,000	35,000	20,000				
TOTAL COSTS	135,000	80,000	55,000	-	-	-	-
REQUESTED FUNDING							
Water Reserves and Rates	80,000	80,000					
Developer Funded	55,000		55,000				
TOTAL SOURCES	135,000	80,000	55,000	-	-	-	-

City of Black Diamond Water System Comprehensive Plan



CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: AB15-015 Resolution No. 15-1012, authorizing an Interlocal Agreement with the Cities of Maple Valley and Covington for building services under the Black Diamond Community Development Department. Cost Impact (see also Fiscal Note): \$39,600 (Estimated, based on 11 months of work, 12 hours a week, at \$75.00 (average hourly rate)) Fund Source: -- Pass through funds from permitting fees. Timeline: December 31, 2015	Agenda Date: February 5, 2015	
	AB15-015	
	Mayor Carol Benson	
	City Administrator	
	City Attorney Carol Morris	Reviewed
	City Clerk – Brenda L. Martinez	
	Com Dev/Nat Res – Aaron Nix	X
	Finance – May Miller	
	MDRT/Ec Dev – Andy Williamson	
	Police – Chief Kiblinger	
	Public Works – Seth Boettcher	
	Court – Stephanie Metcalf	
Agenda Placement: ☒ Mayor ☒ Two Councilmembers ☐ Committee Chair ☐ City Administrator		
Attachments: Resolution No. 15-1012, Attachment A and previous Resolution No. 13-859 (Background Information)		

SUMMARY STATEMENT:

For the past four years, the City of Black Diamond has utilized Building Division services from the City of Covington in order to meet the demands associated with these services in Black Diamond. The arrangement has worked out well for the City of Black Diamond, as Covington Staff provide professional service, from accredited staff that helped assure that these activities are reviewed and completed in accordance with the City's adopted standards.

Staff expects this level of service to continue and have met with the community Development Directors of both Maple Valley and Covington to expand these services, including building inspection staff from the City of Maple Valley. Black Diamond's Community Development Director is confident that both Covington and Maple Valley hire qualified individuals for these services, which has been verified with the City's current Building Official, Robert Meyers.

Under the proposed arrangement, the City of Covington would supply both Building Official duties and Plan Review, while the City of Maple Valley would supply Building Inspection services. As more staff will now be available to the City of Black Diamond for these services, the expectation is that plan review will be done quicker and we will have the ability to be more effective/efficient with building inspection duties, as more resources available to us, on a as needed basis. Because of this, Black Diamond staff expect to utilize these services less than we have in the past, as we currently have a set amount of hours (12 hours a week), regardless of the current work load.

The City Attorney has reviewed the original Interlocal Agreement, previously approved by the

City Councils of Covington and Maple Valley and has expressed her concerns with the version submitted to Black Diamond. These issues have been reviewed, with extensive work on Staff's part to help rectify these issues. Upon request by Black Diamond staff to Covington and Maple Valley for integration of these changes, both Maple Valley and Covington appreciated the suggested changes, but felt that this agreement could not be changed this go round and offered that these changes be integrated into a subsequent Interlocal Agreement, scheduled to be negotiated before the end of 2015, as this Interlocal Agreement runs for the remainder of 2015 only. This appears to be amenable to the Planning and Community Services Committee, as discussed with them at their January 13, 2015 meeting, as well as the Mayor.

FISCAL NOTE (Finance Department): The 2015 Budget for Building Official is \$24,000 and \$20,000 for Plans Examiner for a total of \$44,000. This is adequate to cover the proposed costs as long as the needed hours do not exceed expectations. Building permit and plans examiner revenues cover these costs.

COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: The Planning and Community Services Committee met on January 6, 2015 met to discuss this Interlocal Agreement and recommended acceptance of the agreement, as is, in the form received from the City of Covington, with no modifications.

RECOMMENDED ACTION: **MOTION to adopt Resolution No. 15-1012, approving the Interlocal Agreement with the Cities of Covington and Maple Valley for building services through the end of 2015, and subsequent re-negotiation with these jurisdictions for services provided thereafter.**

RECORD OF COUNCIL ACTION

<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
February 5, 2015		

RESOLUTION NO. 15-1012

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, AUTHORIZING THE MAYOR TO SIGN AN INTERLOCAL AGREEMENT WITH THE CITIES OF COVINGTON AND MAPLE VALLEY FOR BUILDING DEPARTMENT RELATED SERVICES

WHEREAS, Black Diamond, Covington and Maple Valley are public agencies as defined by Ch. 39.34 of the Revised Code of Washington ("RCW"), and are authorized to enter into Interlocal Agreements on the basis of mutual advantage and thereby to provide services and facilities in the manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs of the local communities; and

WHEREAS, Covington and Maple Valley maintain building division Staff that regularly enforces and administers building code requirements, reviews building permit applications, conducts building inspections and engages in building-related code enforcement activities; and

WHEREAS, there is currently not enough building sufficient building permit activity, although has been trending significantly upward, to allow the City to maintain a full-time building official/inspector; and

WHEREAS, the City of Black Diamond currently utilizes the City of Covington, under an existing Interlocal Agreement for these services, which is slated to expire on March 15, 2015;

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

Section 1. The Mayor is authorized to sign an Interlocal Agreement with the Cities of Covington and Maple Valley for building code administration, plans examination, building inspection and building-related code enforcement services, substantially in the form as Attachment A.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 5th DAY OF FEBRUARY, 2015.

CITY OF BLACK DIAMOND:

Carol Benson, Mayor

Attest:

Brenda L. Martinez, City Clerk

**INTERLOCAL AGREEMENT
BETWEEN
THE CITIES OF COVINGTON, MAPLE VALLEY, AND BLACK DIAMOND
FOR
BUILDING SERVICES**

RECITALS

THIS INTERLOCAL AGREEMENT ("Agreement") is entered into between the City of Covington, a Washington municipal corporation ("Covington"), the City of Maple Valley, a Washington municipal corporation ("Maple Valley"), and the City of Black Diamond, a Washington municipal corporation ("Black Diamond"), (collectively the "Parties" or "Cities" or in the singular "Party" or "City").

WHEREAS, the Parties are "public agencies" as defined by Chapter 39.34 of the Revised Code of Washington (RCW) and through the provisions of that chapter are authorized by state law to enter into interlocal agreements on the basis of mutual advantage and thereby to provide services and facilities in the manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs of local communities; and

WHEREAS, the Parties' have similar building code administration, plans examination, and building inspection needs and each Party can realize certain economies from sharing resources, thereby providing savings to taxpayers through contracting for shared services; and

WHEREAS, each Party has agreed to compensate a Party for services offered under this Agreement;

NOW THEREFORE, in consideration of the mutual promises contained herein, it is agreed between the Parties as follows:

AGREEMENT

1. **Purpose.** It is the purpose of this Agreement to utilize the provisions of state law to enable the Parties' to take advantage of economies of scale in sharing resources and by offering building code administration, plans examination, and building inspection services to the other Parties.
2. **Services.** Covington and Maple Valley (collectively the "Providing Parties" or individually a "Providing Party") agree to offer the following services ("Offered Service(s)") to the Parties upon request (collectively the "Requesting Parties" or individually a "Requesting Party") pursuant to the following.

2.1. Offered Services.

2.1.1. Building Code Administration. Covington agrees to offer building code administration services, performed by Covington's Building Official, to Requesting Parties.

2.1.2. Plans Examination. Covington agrees to offer plans examination services, performed by Covington's Plans Examiner, to Requesting Parties.

2.1.3. Building Inspection. Maple Valley agrees to offer building inspection services, performed by Maple Valley's Building Inspectors, to Requesting Parties.

2.2. Requests for Offered Services. A Requesting Party shall submit a written request to the relevant Providing Party for performance of an Offered Service, including any and all needs, specifications, or standards that must be considered. Such written request must be made by the Requesting Party's Community Development Director or authorized designee. For the purposes of this sub-section, the Parties agree that a written request may be submitted by a Requesting Party to a Providing Party via email.

2.3. Acceptance of Request for Offered Services. The Providing Party shall promptly respond to a written request for an Offered Service with a written acceptance or denial. The Providing Party may deny a request for an Offered Service at its sole discretion and without reason. Such written acceptance or denial of a request for an Offered Service must be issued by the Providing Party's Community Development Director or authorized designee. For the purposes of this sub-section, the Parties agree that a written acceptance or denial may be issued by a Providing Party to a Requesting Party via email.

2.4. Providing Party Administrative Oversight. The Providing Party shall have administrative oversight of the Offered Service requested and shall be responsible for invoicing the Requesting Party for the Offered Service rendered pursuant to Section 4 herein.

3. Term of Agreement. This Agreement shall become effective as of the date this Agreement is approved by the legislative body of at least two (2) Parties and subsequently executed by those Parties according to each of those Parties' adopted policies and procedures. The remaining Party may enter into this Agreement at any time upon approval of their legislative body and subsequently executed according to that Party's policies and procedures. Unless terminated by all Parties pursuant to the terms of this Agreement, this Agreement shall remain in full force and effect until December 31, 2015.

This Agreement may be extended by written agreement of the Parties subject to the approval of such extension by each Party's legislative body.

4. Payment. Requesting Parties shall pay for Offered Services provided by Providing Parties pursuant to the following.

- 4.1. Payments for Offered Services.** A Requesting Party shall pay for actual direct and related indirect costs, including any overhead and administrative charges, for Offered Services provided by the relevant Providing Party pursuant to the fees listed for each Providing Party in Exhibit A, attached hereto and incorporated herein by this reference. Any indirect costs may be waived by a Providing Party at its sole discretion.
- 4.2. Billing.** Each Providing Party shall submit a monthly invoice to each Requesting Party, which shall contain the amount of Offered Services provided during the preceding month. Payment shall be made by the Requesting Party within thirty (30) days of receipt of said invoice from a Providing Party.
- 4.3. Disputes.** In the event there is a dispute regarding an invoiced amount by a Providing Party, the Parties in dispute shall make every effort to resolve such dispute by mutual agreement. In the event there is no mutually agreed resolution to the dispute, the relevant Parties shall forward the dispute to each Party's City Manager/City Administrator/Mayor for resolution. In the event there is no resolution after review by the Parties' City Manager/City Administrator/Mayor, the Parties shall seek mediation through a mutually agreed mediation service and each Party shall bear its own costs for mediation. If mediation is unsuccessful, any Party may pursue any legal remedy available from a court of competent jurisdiction. Any dispute that has gone to mediation and mediation was unsuccessful in resolving the dispute shall be grounds for any Party to terminate this Agreement for material breach.

5. Termination.

- 5.1. Termination by Notice.** Any Party may terminate its participation in this Agreement by providing the other Parties with sixty (60) days advance written notice of the effective date of such termination. The Party providing such notice shall remain responsible for any costs incurred under this Agreement.
- 5.2. Termination by Mutual Written Agreement.** This Agreement may be terminated in its entirety at any time by a written agreement executed by all of the Parties.
- 5.3. Termination for Breach.** Any Party may terminate its participation in this Agreement for material breach of the terms of this Agreement upon fourteen (14) days advance written notice to the other Parties, provided that disputes regarding billing statements shall be handled pursuant to Subsection 4.3 and shall not be deemed a breach of this Agreement except as set forth in Subsection 4.3.

- 6. Indemnification and Hold Harmless.** Each Party hereto (the "Indemnifying Party") shall hold harmless and indemnify each other Party hereto, its elected officials, officers, employees, and agents (collectively the "Indemnitees") from and against any and all suits, actions, claims, liability, damages, judgments, costs, and expenses (including reasonable attorneys' fees) that result from or arise out of the acts or omissions of the Indemnifying party, its elected officials, officers, employees, and agents in connection with or incidental to the performance or non-performance of Offered Services, duties, and obligations under this Agreement.

In the event the acts or omissions of the officials, officers, agents, and/or employees of a Party in connection with or incidental to the performance or non-performance of Offered Services, duties, or obligations under this Agreement are the subject of any liability claims by a third party, each Party shall each be liable for its proportionate concurrent negligence in any resulting suits, actions, claims, liability, damages, judgments, costs, and expenses and for their own attorneys' fees.

Nothing contained in this section or this Agreement shall be construed to create a right in any third party to indemnification.

The provisions of this section shall survive any termination or expiration of this Agreement.

It is further specifically and expressly understood and agreed that the indemnification provided herein constitutes each Party's waiver of immunity under Industrial Insurance, Title 51 RCW, solely to carry out the purposes of this indemnification clause. The Parties further acknowledge that they have mutually negotiated this waiver.

7. **Insurance.** Covington, Maple Valley, and Black Diamond are members of insurance risk pools, and, consistent with the policies established by each Party's respective risk pool, Covington, Maple Valley, and Black Diamond are insured and agree to maintain for the duration of the Agreement insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the Offered Services hereunder by each Party, its officers, agents, representatives, or employees. Should a Requesting Party require specific insurance coverage for a specific Offered Service, the Requesting Party shall indicate any additional insurance specifications or standards in their written request for Offered Services pursuant to Sub-section 2.2 herein.

8. **Independent Service Provider.**

- 8.1. The Parties intend that an independent contractor relationship is created by this Agreement. In providing Offered Services under this Agreement, each Providing Party is an independent contractor and neither it nor its officers, agents, or employees are employees of a Requesting Party for any purpose, including responsibility for any federal or state tax, industrial insurance, or Social Security liability. Neither shall the provision of Offered Services under this Agreement give rise to any claim of career service or civil service rights, which may accrue to an employee of the Providing Party under any applicable law, rule, or regulation. Nothing in this Agreement is intended to create an interest in or give a benefit to third persons not signing as a party to this Agreement. As an independent contractor, each Providing Party shall be responsible for the reporting and payment of all applicable local, state, and federal taxes.
- 8.2. To the extent that any Requesting Party exercises control and direction over the work of any Providing Party, such control and directions will be for purposes of achieving the results specified in the request for Offered Services. No agent, employee, or representative of a Providing Party shall be deemed to be an employee, agent, or representative of a Requesting Party for any purpose, and the employees of a Providing Party are not entitled to any of the benefits that a Requesting Party

provides for its employees. Each Providing Party shall be solely and entirely responsible for its acts and for the acts of its agents, employees, or representatives performed within the authorized scope of its agents, employees, or representatives' duties during the performance of this Agreement.

- 8.3. In the performance of the Offered Services herein each Providing Party is an independent contractor with the authority to control and direct the performance of the details of the Offered Service; however, the results of the Offered Services herein must meet the approval of the Requesting Party and shall be subject to the Requesting Party's general rights of inspection and review to secure the satisfactory completion thereof.

9. Miscellaneous.

- 9.1. **Notices.** Notwithstanding Sub-sections 2.2 and 2.3 herein, notices to be provided pursuant to this Agreement shall be provided in writing to the person and address indicated below. Notices shall be deemed delivered three (3) days after placement of the notice in the U.S. Mail, first class postage pre-paid. Courtesy copies of notices may be provided via email transmission but shall not constitute delivery of written notice as set forth herein.

9.1.1. City of Covington
Community Development Director
16720 SE 271st St. Suite 100
Covington, WA 98042

9.1.2. City of Maple Valley
Community Development Director
22017 SE Wax Road, Suite 200
Maple Valley, WA 98038

9.1.3. City of Black Diamond
Community Development Director
24301 Roberts Drive
PO Box 599
Black Diamond, WA 98010

- 9.2. **Non-Waiver of Breach.** The failure of any Party to insist upon strict performance of any of the covenants and agreements contained in this Agreement shall not be construed to be a waiver or relinquishment of those covenants, agreements, or options, and the same shall be and remain in full force and effect.

- 9.3. **Resolution of Disputes and Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Subject to Sub-section 4.3, if the Parties are unable to settle any dispute, difference, or claim arising from the Parties' performance of this Agreement, the exclusive means of resolving that dispute, difference, or claim shall only be by filing suit exclusively under the venue, rules, and jurisdiction of the King County Superior Court, King County,

Washington, unless the relevant Parties agree in writing to an alternative dispute resolution process.

- 9.4. Assignment.** This Agreement is not assignable by any Party, in whole or in part.
- 9.5. Modification.** No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless made in writing and approved by the legislative body of each city.
- 9.6. Compliance with Laws.** Each Party agrees to comply with all local, federal, and state laws, rules, and regulations that are now effective or in the future become applicable to this Agreement.
- 9.6.1. Nondiscrimination in Employment.** In the performance of this Agreement, no Party will discriminate against any employee on the grounds of race, religion, creed, color, national origin, sex, marital status, disability, sexual orientation, age, or other basis prohibited by state or federal law unless based upon a bona fide occupational qualification. Each Party shall take such action with respect to this Agreement as may be required to ensure full compliance with local, state, and federal laws prohibiting discrimination in employment.
- 9.6.2. Nondiscrimination in Services.** No Party will discriminate against any recipient of any Services provided for in this Agreement on the grounds of race, religion, creed, color, national origin, sex, marital status, disability, sexual orientation, age, or other basis prohibited by state or federal law.
- 9.7. Entire Agreement.** The written terms and provisions of this Agreement, together with any exhibits attached hereto, shall supersede all prior communications, negotiations, representations or agreements, either verbal or written, of any officer, employee, or other representative of each party and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Agreement. All of the exhibits are hereby made part of this Agreement. Should any of the language of any exhibits to this Agreement conflict with any language contained in this Agreement, the language of this document shall prevail.
- 9.8. Severability.** If any provision of this Agreement, in whole or in part, is adjudicated to be invalid, such action shall not affect the validity of any provision not so adjudicated.
- 9.9. Interpretation.** The legal presumption that an ambiguous term of this Agreement should be interpreted against the Party who prepared the Agreement shall not apply.
- 9.10. No Third Party Beneficiaries.** This Agreement is between the Parties and is not meant to benefit any third party.
- 9.11. Counterparts.** This Agreement may be executed in multiple counterparts, any of which shall constitute an agreement by and among the Parties who have executed this Agreement, provided that each Party shall transmit to the attention of the Covington City Clerk an original, executed signature page of this Agreement. The

Covington City Clerk shall cause a copy of this Agreement and a copy of each executed signature page of each party to be posted on the Covington City website pursuant to RCW 39.34.040.

Signatures appear on next page

IN WITNESS WHEREOF, the parties below execute this Agreement, which shall become effective pursuant to the terms of Section 3, herein.

CITY OF COVINGTON:	CITY OF MAPLE VALLEY:
By: _____ (signature) Print Name: <u>Rob Hendrickson</u> Its <u>Interim City Manager</u>	By: _____ (signature) Print Name: <u>David W. Johnston</u> Its <u>City Manager</u>
DATE: _____	DATE: _____
ATTESTED BY: _____ Sharon Scott, City Clerk	ATTESTED BY: _____ City Clerk
APPROVED AS TO FORM: _____ Sara Springer, City Attorney	APPROVED AS TO FORM: _____ Patricia Taraday, City Attorney

CITY OF BLACK DIAMOND:

By: _____
(signature)

Print Name: _____ Carol Benson

Its _____ Mayor

DATE: _____

ATTESTED BY:

City Clerk

APPROVED AS TO FORM:

City Attorney

EXHIBIT A
PROVIDING PARTIES' SERVICE FEES—2015

1. Covington Service Fees

- (a) Building Administration Services of Building Official-Hourly fee of \$89.00**
- (b) Building Plan Review Services of Plans Examiner-Hourly fee of \$68.00**

2. Maple Valley Service Fees

- (a) Building Inspection Services of Building Inspectors-Hourly fee of \$75.00, which includes vehicle and travel costs**

RESOLUTION NO. 13-859

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, AUTHORIZING THE MAYOR TO SIGN AN INTERLOCAL AGREEMENT WITH THE CITY OF COVINGTON FOR BUILDING CODE SERVICES

WHEREAS, Black Diamond and Covington are public agencies as defined by Ch. 39.34 of the Revised Code of Washington ("RCW"), and are authorized to enter into interlocal agreements on the basis of mutual advantage and thereby to provide services and facilities in the manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs of local communities; and

WHEREAS, Covington's Community Development Department maintains a building division that regularly enforces and administers the building code requirements, reviews building permit applications, conducts building inspections, and engages in code enforcement activities; and

WHEREAS, there currently is not sufficient building permit activity within Black Diamond to allow the City to maintain employ a full-time building official/inspector; and

WHEREAS, the Cities of Black Diamond and Covington have an existing Interlocal Agreement for these services which will expire on March 22, 2013; and

WHEREAS, Black Diamond desires to continue to utilize the resources of Covington to assist Black Diamond in performing building code administration, plan review, and building inspections; and

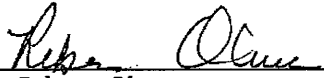
WHEREAS, Black Diamond has agreed to compensate Covington for performing these services; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND HEREBY RESOLVES AS FOLLOWS:

Section 1. The Mayor is authorized to sign an interlocal agreement with the City of Covington for building code administration, plans examination, building inspection and code enforcement services substantially in the form attached as Exhibit A.

RESOLVED this 14th day of March, 2013 at Special Council meeting.

CITY OF BLACK DIAMOND



Mayor Rebecca Olness

ATTESTED BY:



Brenda L. Martinez, City Clerk

DATE OF PASSAGE BY THE CITY COUNCIL: 3/14/2013

DATE OF FILING WITH THE CITY CLERK: 3/15/2013

**INTERLOCAL AGREEMENT BETWEEN
THE CITIES OF BLACK DIAMOND & COVINGTON
RELATING TO BUILDING CODE ADMINISTRATION, PLANS EXAMINATION, &
BUILDING INSPECTIONS SERVICES**

THIS INTERLOCAL AGREEMENT, hereinafter "Agreement", is entered into between the CITY OF BLACK DIAMOND, WA hereinafter "Black Diamond", and the CITY OF COVINGTON, WA hereinafter "Covington".

WHEREAS, Black Diamond and Covington are public agencies as defined by Ch. 39.34 of the Revised Code of Washington ("RCW"), and are authorized to enter into interlocal agreements on the basis of mutual advantage and thereby to provide services and facilities in the manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs of local communities; and

WHEREAS, Covington's Community Development Department maintains a building division that regularly enforces and administers the building code requirements, reviews building permit applications, and conducts building inspections; and

WHEREAS, Black Diamond desires to utilize the resources of Covington to assist Black Diamond in performing building code administration, plan review, and building inspection; and

WHEREAS, Black Diamond has agreed to compensate Covington for performing these services; and

NOW THEREFORE, in consideration of the terms and provisions contained herein, it is agreed between Black Diamond and Covington as follows:

1. **Purpose.** It is the purpose of this Agreement to establish the framework to effectuate Black Diamond's desire to have Covington perform these services for payment.

2. **Services—Generally.**

2.1. **Approval and Priority.** All services provided by Covington to Black Diamond, as detailed in this Agreement, will be performed by Covington's building staff as approved and directed by Covington's Community Development Director (the "Director") or Covington's Building Official ("Building Official") and subsequent to regularly assigned duties for Covington staff.

2.2. **Request for Services.** Covington staff will maintain a regular schedule of office hours at Black Diamond. Unless otherwise provided for in this Agreement, Black Diamond shall submit all requests for additional hours of service in writing. Requests submitted via e-mail qualify as "in writing" for purposes of this Agreement.

3. **Building Official Services.** Covington will provide Building Official services in

accordance with the current construction codes as adopted and amended by the State of Washington and Black Diamond.

3.1 **Building Official.** Covington's Building Official will perform the duties of Building Official to enforce and administer the provisions of Black Diamond's building code and is authorized to render interpretations of the code in accordance with the adopted construction codes.

3.2 **Meetings.** Covington's Building Official will attend meetings as requested, such as pre-application meetings, pre-submission meetings, enforcement hearings, and City Council meetings, to represent Black Diamond in the role of Building Official.

3.3 **Inspections, Plan Review.** Covington's building staff will perform inspections and plan review, duties upon request by Black Diamond and pursuant to the procedures provided in this Agreement.

3.4 **Hours of Service.** In recognition of the mutual benefits of this Agreement, Covington's staff will provide a minimum of forty-five hours (45) hours of service per month. Black Diamond may request up to sixty-five (65) hours per month. Changes or alterations to the scheduled hours can be requested in writing by either party.

4. **Building Plan Review Services.** Covington Plan Review Staff will review plans for code compliance upon request and in accordance with the current construction codes as adopted and amended by the State of Washington and Black Diamond.

4.1. Black Diamond shall submit requests for any plan review services to the Building Official.

4.2. If corrections or additions are required, Covington Plan Review Staff will draft comments and send an electronic copy to Black Diamond within four (4) weeks of receipt. A longer timeline may be given to allow sufficient review of more time intensive projects, including but not limited to commercial and multi-family projects.

4.3. If approved, Covington Plan Review Staff will indicate in writing that the drawings have been reviewed for code compliance. Approved sets of plans shall be returned to Black Diamond for issuance. Denied or expired permit applications will be returned to Black Diamond after 180 days of inactivity on the application.

4.4. Covington Plan Review Staff will attend meetings upon request, such as pre-application meetings, pre-construction meetings, and enforcement hearings, to represent Black Diamond in the role of Plans Examiner.

5. **Building Inspection Services.** Covington Building Inspection Staff shall perform building inspections, including building, plumbing, and mechanical inspections, upon request. The governing codes used for inspection shall be the International Building Code, International Residential Code, International Mechanical Code and Uniform Plumbing Code as adopted by Black Diamond in the Black Diamond Municipal Code. Inspections will be performed according to the regular inspection schedule set by the Director or Building Official.

5.1. Black Diamond shall submit requests for inspections to the Building Official by 4:00 pm the business day prior of the requested inspection. Generally, inspections will not be conducted on Fridays, unless Covington notifies Black Diamond that staff will be available.

5.2. Covington Building Inspection staff shall maintain electronic records of inspections in Black Diamond's permit system software and provide Black Diamond with copies of any correction notices and the results of the inspections performed within one (1) business day of the date of the inspection. The correction notices may be provided in electronic or paper format.

5.3.

6. Term of Agreement. This Agreement shall become effective on the last date this Agreement is ratified by the legislative body of Covington and the legislative body of Black Diamond. Unless terminated by either party pursuant to the terms of this Agreement, this Agreement shall remain in full force and effect for two (2) years from the effective date. This Agreement may be extended by mutual written agreement of the parties subject to the ratification of such extension by the legislative body of each city.

7. Payment to Covington. In consideration of this Agreement and the services provided, Black Diamond shall pay Covington an hourly rate by specific Covington employee for all services provided by Covington under this Agreement, as listed in Exhibit A. In years subsequent to 2013, Covington and Black Diamond shall negotiate and set the hourly rate for the next year of service. A two (2) hour minimum shall be charged to Black Diamond for each date of any service by Covington. After the two (2) hour minimum is reached for a single date, Black Diamond shall pay for each fifteen (15) minute increment, which shall be rounded to the nearest fifteen (15) minute increment. Black Diamond shall be required to pay Covington regardless of whether Black Diamond is paid or collects fees for the services that involved the work of Covington. Payments for services rendered shall be made by Black Diamond each month within thirty (30) days of receipt of the billing statement from Covington.

7.1. Billing Statement. Covington shall submit a monthly statement to Black Diamond that shall contain the following:

Date of Service
Hours of work
Staff Name

7.2. Billing Statement Dispute. In the event that there is a dispute regarding the amount of money owed by Black Diamond to Covington, staff shall make every effort to resolve such dispute. In the event that there is no resolution to the dispute, the disputed amount shall be placed into the registry of the King County Superior Court until the dispute is resolved by agreement of the parties or in a court with jurisdiction over the subject matter of the dispute.

7.3. Reconciliation of Amount Due After Termination or Expiration. Within thirty (30) days of the effective date of this Agreement's expiration or earlier termination, Covington shall submit to Black Diamond a statement as described in subsection 7.1 of this Agreement for the past quarter or part thereof. Within thirty (30) days of submitting the statement, the parties shall reconcile the account and determine how much money Black Diamond

owes to Covington for unpaid services. Final payment and settlement of accounts shall occur within ninety (90) days of the effective date of termination of the Agreement.

8. Ownership of Property. The parties to this Agreement do not contemplate the acquisition of any property to carry out the purposes of this Agreement. Any property owned by Black Diamond shall remain the property of Black Diamond, and any property owned by Covington shall remain the property of Covington.

9. Independent Contractor. The Parties understand and agree that Covington is acting hereunder as an independent contractor and shall maintain control of all Covington employees, including but not limited to hiring, firing, discipline, evaluation, and establishment of standards of performance thereof. All Covington personnel rendering service hereunder shall be, for all purposes, employees of Covington, although they may from time to time act as officers of Black Diamond.

10. Termination.

10.1. Termination by Notice. This Agreement may be terminated by either party upon it providing the other party with sixty (60) days advance written notice of such termination.

10.2. Termination by Mutual Written Agreement. This Agreement may be terminated at any time by mutual written agreement of the parties.

10.3. Termination for Breach. Covington may terminate this Agreement with fourteen (14) days advance written notice upon the failure of Black Diamond to make payments as required by this Agreement. Black Diamond may terminate this Agreement upon fourteen (14) days advance written notice in the event Covington fails to provide services as required in this Agreement except disputes handled per Section 7.2.

11. Indemnification and Hold Harmless. Covington agrees to defend, indemnify, and hold harmless Black Diamond and each of its employees, officials, agents, and volunteers from any and all losses, claims, liabilities, lawsuits, or legal judgments arising out of any negligent or tortious actions or inactions by Covington or any of its employees, officials, agents, or volunteers, while acting within the scope of the duties required by this Agreement. All costs, including but not limited to attorneys fees, court fees, mediation fees, arbitration fees, settlements, awards of compensation, awards of damages of every kind, etc., shall be paid by Covington or its insurer. This provision shall survive the expiration of this Agreement. This provision shall also survive and remain in effect in the event that a court or other entity with jurisdiction determines that this interlocal Agreement is not enforceable.

Black Diamond agrees to defend, indemnify, and hold harmless Covington and each of its employees, officials, agents, and volunteers from any and all losses, damages, claims, liabilities, lawsuits, or legal judgments arising out of any negligent or tortious actions or inactions by Black Diamond or any of its employees, officials, agents, or volunteers, while acting within the scope of the duties required by this Agreement. All costs, including but not limited to attorneys fees, court fees, mediation fees, arbitration fees, settlements, awards of compensation, awards of damages of every kind, etc., shall be paid by Black Diamond or its insurer. This provision shall survive the expiration or earlier termination of this Agreement. This provision shall also survive and remain in

effect in the event that a court or other entity with jurisdiction determines that this interlocal Agreement is not enforceable.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES EACH PARTY'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY TO CARRY OUT THE PURPOSES OF THIS INDEMNIFICATION CLAUSE. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

12. Miscellaneous.

12.1. Non-Waiver of Breach. The failure of either party to insist upon strict performance of any of the covenants and agreements contained in this Agreement, or to exercise any option conferred by this Agreement in one or more instances, shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect.

12.2. Resolution of Disputes and Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. If the parties are unable to settle any dispute, difference or claim arising from the parties' performance of this Agreement, the exclusive means of resolving that dispute, difference or claim, shall only be by filing suit exclusively under the venue, rules and jurisdiction of the King County Superior Court, King County, Washington, unless the parties agree in writing to an alternative dispute resolution process. In any claim or lawsuit for damages arising from the parties' performance of this Agreement, each party shall pay all its legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit the parties' right to indemnification under this Agreement.

12.3. Assignment. Any assignment of this Agreement by either party without the prior written consent of the non-assigning party shall be void. If the non-assigning party gives its consent to any assignment, the terms of this Agreement shall continue in full force and effect and no further assignment shall be made without additional written consent.

12.4. Modification. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of each party and subject to ratification by the legislative body of each City.

12.5. Compliance with Laws. Each party agrees to comply with all local, federal and state laws, rules, and regulations that are now effective or in the future become applicable to this Agreement.

12.6. Entire Agreement. The written terms and provisions of this Agreement, together with any exhibits attached hereto, shall supersede all prior communications, negotiations, representations or agreements, either verbal or written of any officer or other representative of each party, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Agreement. All of the exhibits are hereby made part

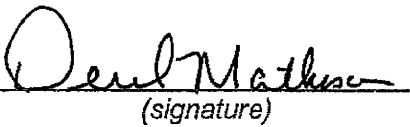
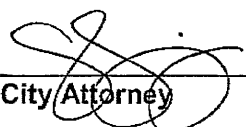
of this Agreement. Should any of the language of any exhibits to this Agreement conflict with any language contained in this Agreement, the language of this document shall prevail.

12.7. **Severability.** If any section of this Agreement is adjudicated to be invalid, such action shall not affect the validity of any section not so adjudicated.

12.8. **Interpretation.** The legal presumption that an ambiguous term of this Agreement should be interpreted against the party who prepared the Agreement shall not apply.

12.9. **Notice.** All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the Agreement, unless notified to the contrary. Any written notice hereunder shall become effective upon personal service or three (3) business days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

IN WITNESS, the parties below execute this Agreement, which shall become effective on the last date entered below.

COVINGTON: CITY OF COVINGTON: By: <u></u> (signature) Print Name: <u>Derek M. Matheson</u> Its <u>City Manager</u> DATE: <u>3/12/13</u>	BLACK DIAMOND: CITY OF BLACK DIAMOND: By: <u></u> Print Name: <u>Rebecca Olness</u> Its <u>Mayor</u> DATE: <u>3/15/2013</u>
NOTICES TO BE SENT TO: <u>Derek M. Matheson</u> , City Manager City of Covington 16720 SE 271 st Street, Suite 100 Covington, WA 98042 (253) 480-2494 (telephone) (253) 480-2401 (facsimile)	NOTICES TO BE SENT TO: <u>Rebecca Olness</u> , Mayor City of Black Diamond PO Box 599 24301 Roberts Drive Black Diamond, WA 98042 (360) 886-5700 (telephone) (360) 886-2592 (facsimile)
APPROVED AS TO FORM: <u></u> City Attorney	APPROVED AS TO FORM: _____ City Attorney

A. EXHIBIT A
BUILDING DEPARTMENT SERVICES FEES

2013-2014 Hourly Rates

Building Official	\$86.00
Plans Examiner	\$65.00

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: AB15-016 Ordinance relating to land use and zoning, amending the Black Diamond Municipal Code provisions relating to Development Agreements to establish the duration of such agreements to be no more than twenty years, amending sections 18.66020 and 18.66.040 of the Black Diamond Municipal Code and establishing an effective date.	Agenda Date: February 5, 2015	
	AB15-016	
	Mayor Carol Benson	
	City Administrator	
	City Attorney Carol Morris	X
	City Clerk – Brenda L. Martinez	
	Com Dev/Nat Res – Aaron Nix	
	Finance – May Miller	
	MDRT/Ec Dev – Andy Williamson	
	Police – Chief Kiblinger	
Public Works – Seth Boettcher		
Court – Stephanie Metcalf		
Cost Impact (see also Fiscal Note): N/A		
Fund Source: N/A		
Timeline: N/A		
Agenda Placement: ☒ Mayor ☐ Two Councilmembers ☐ Committee Chair ☐ City Administrator		
Attachments: Ordinance No. 15-1046		
SUMMARY STATEMENT: The City adopted Ordinance No. 14-1030 establishing the process for Development Agreements, on August 21, 2014, but did not enter a time period as required for in sections 18.66.020 (C) and 18.66.040 (B). With this Ordinance, a time period for vesting has been established, along with some minor wording modifications, as shown within Ordinance No. 15-1046.		
FISCAL NOTE (Finance Department): N/A		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: N/A		
RECOMMENDED ACTION: Motion to approve Ordinance No. 15-1046 amending the Black Diamond Municipal Code provisions relating to Development Agreements to establish the duration of such agreements to be no more than twenty years, amending sections 18.66020 and 18.66.040 of the Black Diamond Municipal Code and establishing an effective date.		
RECORD OF COUNCIL ACTION		
Meeting Date	Action	Vote
August 21, 2014	Approved	
February 5, 2015		

ORDINANCE NO. 15-1046

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, RELATING TO LAND USE AND ZONING, AMENDING THE BLACK DIAMOND MUNICIPAL CODE PROVISIONS RELATING TO DEVELOPMENT AGREEMENTS TO ESTABLISH THE DURATION OF SUCH AGREEMENTS TO BE NO MORE THAN TWENTY YEARS, AMENDING SECTIONS 18.66.020 AND 18.66.040 OF THE BLACK DIAMOND MUNICIPAL CODE AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City adopted Ordinance No. 14-1030 establishing the process for Development Agreements, but did not enter a time period as required for in sections 18.66.020 (C) and 18.66.040 (B); and

WHEREAS, the SEPA Responsible Official has determined that this Ordinance is categorically exempt from SEPA as affecting only procedural and no substantive standards, pursuant to WAC 197-11-800(19); and

WHEREAS, this Ordinance was introduced to the City Council for the first time on June 5, 2014; and

WHEREAS, the City Council held a public hearing considered this ordinance for adoption during its regular meeting on August 21, 2015; **NOW, THEREFORE**,

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

Section 1. Section 18.66.020 of the Black Diamond Municipal Code is hereby amended to read as follows:

18.66.020 Form of Agreement, Effect and General Provisions.

A. **Form.** All development agreements shall be on the standard form approved in advance by the City Attorney for this purpose.

B. **Effect.** Development agreements are not project permit applications and are not subject to the permit processing procedures in chapter 18.08 of the BDMC. A development agreement shall constitute a binding contract between the City and the property owner and the subsequent owners of any later-acquired interests in the property identified in the development agreement.

C. Limitations. Any provision of the development agreement which requires the City to: (1) refrain from exercising any authority; (2) forego adoption of any development regulations affecting the property identified in the agreement; (3) allow vesting beyond the applicable deadlines for a phased development; shall be limited to a period of 20 (twenty) years. The development agreement shall also contain a proviso that the City may, without incurring any liability, engage in action that would otherwise be a breach if the City makes a determination on the record that the action is necessary to avoid a serious threat to public health and safety, or if the action is required by federal or state law.

D. Developer's Compliance. The development agreement shall include a clause stating that the City's duties under the agreement are expressly conditioned upon the property owner's substantial compliance with each and every term, condition, provision and/or covenant in the development agreement, all applicable federal, state and local laws and regulations and the property owner's obligations as identified in any approval or project permit for the property identified in the development agreement.

E. No Third Party Rights. Except as otherwise provided in the development agreement, the development agreement shall create no rights enforceable by any party who/which is not a party to the development agreement.

F. Liability. The development agreement shall include clause providing that any breach of the development agreement by the City shall give right only to damages under state contract law and shall not give rise to any liability under chapter 64.40 RCW, the Fifth and Fourteenth Amendments to the U.S. Constitution or similar state constitutional provisions.

Section 2. Section 18.66.040 of the Black Diamond Municipal Code is hereby amended to read as follows:

18.66.040. Phasing.

A. In order to phase a project to extend the vested rights associated with an underlying project permit application, a development agreement is required. This ensures the availability of public facilities and services to all of the property in the identified individual phases, allows tracking of the available capacity of public facilities and utilities during each phase of construction, and with the extension of the vested rights associated with the project, provides certainty to the developer in the subsequent development approval process.

B. The deadlines in the City's code relating to each type of project permit application must be consulted to establish the baseline vesting period. The City is not required to extend the vesting period. If the City decides to do so through a development agreement, it must be in exchange for the property owner's

provision of corresponding benefits to the City in the form of, for example, contributions to public facilities and amenities over and above what would normally be required. In any event, the City shall not allow vesting to extend beyond the period of time established in the development agreement, which shall not exceed 20 years, period after approval of the project permit application.

C. A development agreement for a phased development (such as a subdivision) shall include (in addition to all of the information in Section 18.66.030), all of the following:

1. identification of the phasing schedule;
2. identification of the number of phases and all lots included in each phase;
3. identification of the approximate dates for construction of public streets, public utilities and other improvements in each phase;
4. identification of the approximate dates for commencement of development of each lot, lot sales and building occupancy;
5. identification of the benefits that the property owner will provide to the City in exchange for permission to phase the development according to the proposed schedule;
6. establishment of the deadline for the property owner to submit development applications, including building permit applications, for each phase;
7. a description of the manner in which each phase is designed such that all site requirements are satisfied independently of phases yet to be given final approval and constructed;
8. a description of the manner in which the property owner will ensure that adequate public facilities are available when the impact of development occurs. The property owner shall acknowledge in the development agreement that if the demand for public facilities or services needed to accommodate a subsequent development phase increases following the issuance of a development permit for a prior phase in the approval process, or if public facilities or services included in a concurrency or SEPA determination are not constructed as scheduled in the City's capital facilities plan, final development approval may have to be delayed for future phases pending the achievement of the adopted levels of service.

Section 3. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 4. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 5. Effective Date. This Ordinance shall be effective five days after publication as provided by law.

PASSED by the Council and approved by the Mayor of the City of Black Diamond, this
5th day of February, 2015.

CITY OF BLACK DIAMOND

Mayor Carol Benson

ATTEST/AUTHENTICATED:

Brenda L. Martinez, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Carol A. Morris, City Attorney

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO:

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: AB15-017 Ordinance No. 15-1047, adopting a complete prohibition on recreational marijuana land-uses within the City of Black Diamond.	Agenda Date: February 5, 3015	
	AB15-017	
	Mayor Carol Benson	
	City Administrator	
	City Attorney Carol Morris	Reviewed
	City Clerk – Brenda L. Martinez	
	Com Dev/Nat Res – Aaron Nix	X
	Finance – May Miller	
	MDRT/Economic Dev – Andy Williamson	
	Police – Chief Kiblinger	
Cost Impact (see also Fiscal Note): N/A	Public Works – Seth Boettcher	
Fund Source: N/A	Court – Stephanie Metcalf	
Timeline: Effective, in accordance with the date established within this Ordinance		
Agenda Placement: ☒ Mayor ☒ Two Councilmembers ☐ Committee Chair ☐ City Administrator		
Attachments: Ordinance No. 15-1047		

SUMMARY STATEMENT:

On October 3, 2013, the Council adopted Ordinance No. 13-1012, establishing a six-month moratorium on the acceptance or processing of applications, or issuance of permits and approvals, and uses or activities associated with production, processing, and retailing of marijuana and marijuana-infused products.

At their March 6, 2014 meeting, Council conducted a public hearing on a moratorium that would prohibit the acceptance or processing of applications, or issuance of permits and approvals and uses or activities associated with production, processing, and retailing of marijuana and marijuana-infused products. A subsequent 12-month Moratorium was established by the City Council through Ordinance #14-1024, at their March 20, 2014 Council meeting.

Initiative Measure No. 502 (I-502) authorizes the manufacture, packaging, distribution and retail sale of marijuana and marijuana-infused products for recreational purposes, subject to further promulgation of rules by the Washington State Liquor Control Board (Board). The Board has adopted rules pertaining to licensing of the producers, processors, and retailers, and is now accepting applications for licensing of producers, processors, and retailers. A recent Attorney General's Opinion stated that local governments can use zoning to ban marijuana establishments from their jurisdictions.

Staff has evaluated the impacts of allowing recreational marijuana uses and facilities in residential, retail and commercial zones as well as impacts arising from the proximity of these uses and facilities to schools, daycares, parks, religious and cultural facilities, jails and courthouses. The Planning Commission held a Public Hearing on a Medical Marijuana land use prohibition on January 6, 2015, where one comment was received. Subsequent discussion by the

Planning Commission rendered a recommendation of a proposed prohibition on recreational marijuana land-uses to the City Council, with consideration by the Council to lift the ban if subsequent law changes and issues are addressed adequately to alleviate the Planning Commissions' concern's with regard to these uses.

FISCAL NOTE (Finance Department): N/A

COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: The Planning and Community Services Committee met to discuss this issue at its' meeting on January 13, 2015 and recommended that it be forwarded to the full City Council at their February 5, 2015 meeting, for adoption.

RECOMMENDED ACTION: **MOTION to adopt Ordinance No. 15-1047, adopting a complete prohibition on the siting, establishment, operation or licensing of any structures, property, uses or businesses relating to recreational marijuana production, processing, cultivation, storage, sale, delivery, exchange or bartering; adopting findings to support the prohibition, describing the manner in which violations will be enforced, and adding a new Chapter 20.08 to the Black Diamond Municipal Code.**

RECORD OF COUNCIL ACTION

<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
February 5, 2015		

**CITY OF BLACK DIAMOND, WASHINGTON
ORDINANCE NO. 15-1047**

AN ORDINANCE OF THE CITY OF BLACK DIAMOND, WASHINGTON, RELATING TO THE RECREATIONAL USE OF MARIJUANA, ADOPTING A COMPLETE PROHIBITION ON THE SITING, ESTABLISHMENT, OPERATION OR LICENSING OF ANY STRUCTURES, PROPERTY, USES OR BUSINESSES RELATING TO RECREATIONAL MARIJUANA PRODUCTION, PROCESSING, CULTIVATION, STORAGE, SALE, DELIVERY, EXCHANGE OR BARTERING; ADOPTING FINDINGS TO SUPPORT THE PROHIBITION, DESCRIBING THE MANNER IN WHICH VIOLATIONS WILL BE ENFORCED, AND ADDING A NEW CHAPTER 20.08 TO THE BLACK DIAMOND MUNICIPAL CODE.

WHEREAS, the Washington voters approved Initiative 502 (I-502) in 2012, which “authorizes the state liquor control board to regulate and tax marijuana for persons twenty-one years of age and older, and adds a new threshold for driving under the influence of marijuana”; and

WHEREAS, I-502 allows the Washington State Liquor Control Board to license marijuana producers “to produce marijuana for sale at wholesale to marijuana processors and other marijuana producers” (I-502, Sec. 4(1)); and

WHEREAS, I-502 allows the Washington State Liquor Control Board to license marijuana processors to “process, package and label usable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers” (I-502, Sec. 4(2)); and

WHEREAS, I-502 allows the Washington State Liquor Control Board to license a marijuana retailer to “sell usable marijuana and marijuana-infused products at retail in retail outlets” (I-502, Sec. 4(3)); and

WHEREAS, I-502 establishes certain siting limitations on the Washington State Liquor Control Board’s issuance of such licenses for any premises that are within 1,000 feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center or library, or any game arcade, admission to which is not restricted to persons aged twenty-one years or older (I-502, Section 8); and

WHEREAS, I-502 decriminalizes, for purposes of state law, the production, manufacture, processing, packaging, delivery, distribution, sale or possession of marijuana, as long as such activities are in compliance with I-502; and

WHEREAS, the Washington State Liquor Control Board has adopted rules to implement I-502, which include, among other things: the state licensing of premises where marijuana is produced and processed, and the inspection of same; methods of producing, processing, and packaging the marijuana and marijuana products; security requirements at such establishments; retail outlet locations and hours of operation; labeling requirements and restrictions on advertising of such products; licensing and licensing renewal rules; the manner and method to be used by which licensees may transport and deliver marijuana and marijuana products (among other things); and

WHEREAS, according to these rules, the LCB will determine whether the recreational marijuana business licensee is within 1,000 feet of the sensitive uses identified in WAC 314-55-050(10) and shall not issue the license if it is within this area; and

WHEREAS, the LCB has begun issuance of licenses for recreational marijuana uses; and

WHEREAS, on August 29, 2013, the U.S. Department of Justice (DOJ) issued a Memorandum to all United States Attorneys, acknowledging that several states had adopted laws authorizing marijuana production, distribution and possession by establishing a regulatory scheme for these purposes; and

WHEREAS, in this Memo, the DOJ advised that in recent years, the DOJ has “focused its efforts on certain law enforcement priorities that are particularly important to the federal government,” such as: (a) preventing the distribution of marijuana to minors; (b) preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels; (c) preventing the diversion of marijuana from states where it is legal under state law in some form to other states; (d) preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity; (e) preventing violence and the use of firearms in the cultivation and distribution of marijuana; (f) preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use; (g) preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and (h) preventing marijuana possession or use on federal property; and

WHEREAS, in this Memo, the DOJ warned that “[i]f state enforcement efforts are not sufficiently robust to protect against the harms [identified above] the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms”; and

WHEREAS, in this Memo, the DOJ warned that a regulatory system adequate to this task “must not only contain robust controls and procedures on paper, it must also be effective in practice”; and

WHEREAS, in this Memo, the DOJ advised that “in exercising prosecutorial discretion, prosecutors should not consider the size or commercial nature of a marijuana operation alone as a proxy for assessing whether marijuana trafficking implicates the Department’s enforcement priorities [listed above]” and that federal prosecutors “should continue to review marijuana cases on a case-by-case basis and weigh all available information and evidence, including, but not limited to, whether the operation is demonstrably in compliance with a strong but effective state regulatory system”; and

WHEREAS, on January 16, 2013, the Washington State Attorney General’s Office issued an opinion, which determined that local governments may decide to either zone or ban recreational marijuana uses within their jurisdictions; and

WHEREAS, while the LCB adopted one report on the environmental impacts associated with the cultivation of marijuana, the City is not aware of any other analyses performed by the State of Washington to determine the environmental or secondary land use impacts that a proliferation of medical and recreational marijuana uses would have on towns, cities and counties in Washington; and

WHEREAS, nothing indicates that the LCB will perform any analyses under the State Environmental Policy Act (SEPA) to determine the significant adverse environmental impacts associated with any individual licensee’s operation of a marijuana business and the LCB does not require the submission of a SEPA checklist as part of a recreational marijuana license application; and

WHEREAS, the City plans under the Growth Management Act (“GMA,” chapter 36.70A RCW), and is required to review any “action” under SEPA prior to adopting any comprehensive plan or development regulations; and

WHEREAS, given that the City has no environmental information upon which to make any determinations relating to marijuana uses, the City must collect the same from either the experiences of other areas or by empirical knowledge (after the use has located in the City and the impacts are known); and

WHEREAS, the City intends to take careful, deliberate steps to evaluate marijuana uses, and to perform the environmental analysis that the State omitted; and

WHEREAS, the City passed Ordinances 14-1023 & 14-1024, all of which adopted moratoria or interim zoning on medical and recreational marijuana uses and activities, which acknowledged marijuana’s uncertain legal status and the lack of information available to the City; and

WHEREAS, the City acknowledges that it has not budgeted any funds for the implementation of any medical marijuana enforcement scheme that could satisfy the DOJ’s enforcement priorities; and

WHEREAS, the City Council therefore believes that the adoption of a complete ban on all marijuana uses, whether recreational or medical, is necessary to preserve the status quo;

WHEREAS, the City Planning Commission held a public hearing on this Ordinance on January 6, 2015, and submitted its written recommendation to the City Council; and

WHEREAS, on February 5, 2015, the City Council considered this draft ordinance during its regular meeting;

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

Section 1. **Section A.** The City Council adopts the following new chapter 20.08 to the BLACK DIAMOND Municipal Code:

**CHAPTER 20.08
PROHIBITION ON RECREATIONAL MARIJUANA**

Sections.

- 20.08.010 Findings.**
- 20.08.020 Definitions.**
- 20.08.030 Prohibited Activities.**
- 20.08.040 Uses Not Permitted in Any Zone.**
- 20.08.050 Violations.**
- 20.08.060 Enforcement.**

20.08.010. Findings. The Council adopts all of the “whereas” sections of this Ordinance as findings to support this ban on recreational marijuana, as well as the following:

A. The City Council also acknowledges that the State of Washington has not performed any environmental analyses that will assist cities, towns and counties in the adoption of local regulations addressing recreational marijuana uses, or the environmental impacts associated with the individual recreational marijuana businesses. As a result, municipalities must therefore either develop their own analyses or observe these impacts after-the-fact (or, after the recreational marijuana uses locate and begin operations in cities, towns and counties throughout Washington). Then, the municipalities will be required to “fix” the problems stemming from these uses with their already scarce resources.

B. It is also the purpose of this Ordinance to stem the negative impacts and secondary effects associated with all marijuana uses, whether medical or recreational, including but not limited to the extraordinary and unsustainable demands that have been or will be placed upon scarce City policing, legal, policy and administrative resources; neighborhood disruption, increased transient visitors and intimidation; the exposure of school-age children and other sensitive residents to marijuana, illegal sales to both minors and adults; fraud in issuing, obtaining or using marijuana prescriptions and murders, robberies, burglaries, assaults, drug trafficking and other violent crimes.

C. No part of this Ordinance is intended to or shall be deemed to conflict with federal law, including but not limited to, the Controlled Substances Act, 21 U.S.C. Section 800 *et seq.*, the Uniform Controlled Substances Act (chapter 69.50 RCW) nor to otherwise permit any activity that is prohibited under either Act, or any other local, state or federal law, statute, rule or regulation. Nothing in this Ordinance shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of medical cannabis or recreational marijuana in any manner not authorized by chapter 69.51A RCW or chapter 69.50 RCW. Nothing in this Ordinance shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or that creates a nuisance, as defined herein. It is the intention of the City Council that this Ordinance be interpreted to be compatible with federal and state enactments and in furtherance of the public purposes that those enactments encompass.

20.08.020. Definitions. For purposes of this Ordinance, the following definitions apply:

A. "Cannabis" means all parts of the plant *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. For the purposes of this ordinance, "cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted there from, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. The term "cannabis" includes cannabis products and useable cannabis.

B. "Cannabis products" means products that contain cannabis or cannabis extracts, have a measurable THC concentration greater than three-tenths of one percent, and are intended for human consumption or application, including, but not limited to, edible products, tinctures, and lotions. The term "cannabis products" does not include useable cannabis.

The definition of "cannabis products" as a measurement of THC concentration only applies to the provisions of this ordinance and shall not be considered applicable to any criminal laws related to marijuana or cannabis.

C. "Collective Garden" means those gardens mentioned in RCW 69.51A.085.

D. "Cultivation" means the planting, growing, harvesting, drying or processing of marijuana plants or any part thereof.

E. "Deliver or Delivery" means the actual or constructive transfer from one person to another of a substance, whether or not there is an agency relationship.

F. "Dispense" means the interpretation of a prescription or order for recreational marijuana, and pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare the prescription or order for delivery.

G. "Marijuana" means all parts of the plant Cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. For the purposes of this Ordinance, "cannabis" or "marijuana" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

H. "Marijuana-infused products" means products that contain marijuana or marijuana extracts and are intended for human use. The term "marijuana-infused products" does not include useable marijuana.

I. "Marijuana, Usable" means dried marijuana flowers. The term "usable marijuana" does not include marijuana-infused products.

J. "Outdoors" means any location that is not "indoors" within a fully enclosed and secure structure.

K. "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision of agency or any other legal or commercial entity.

L. "Process" means to handle or process cannabis in preparation for medical or recreational use.

M. "Processor, Marijuana" means a person licensed by the State Liquor Control Board to process marijuana into useable marijuana and marijuana-infused products, package and label usable marijuana and marijuana-infused products for sale in retail outlets, and sell usable marijuana and marijuana-infused products as wholesale to marijuana retailers.

N. "Producer, Marijuana" means a person licensed by the State Liquor Control Board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

O. "Produce or Production" means to manufacture, plant, grow or harvest cannabis or marijuana.

P. "Retailer, Marijuana" means a person licensed by the State Liquor Control Board to sell usable marijuana and marijuana-infused products in a retail outlet.

Q. "Retail outlet" means a location licensed by the State Liquor Control Board for the retail sale of useable marijuana and marijuana-infused products.

20.08.030. Prohibited Activities.

A. It is unlawful to own, establish, site, operate, use or permit the establishment of any recreational marijuana operation which produces, processes or sells recreational marijuana. This prohibition extends to recreational marijuana producers, processors and retailers, even if the same are licensed by the State of Washington. This prohibition applies to any person who participates as an employee, contractor, agent or volunteer, or in any other manner or capacity in any marijuana business, regardless of whether it has a license from the State of Washington.

B. It is unlawful to perform any individual or group marijuana cultivation activities anywhere in the City, regardless of whether such individual or group cultivation is addressed in chapter 69.51A RCW.

C. It is unlawful to lease, rent or otherwise allow any recreational marijuana production, processing or retailing business, whether it is located outdoors, indoors, in any building, structure, premises, location or land in the City and regardless of whether activity has been licensed by the State of Washington.

D. The City shall not issue any business license for any recreational marijuana business. Any business license obtained through misrepresentation of the activities conducted by the individual business shall be invalid and of no force and effect.

20.08.040. Use Not Permitted In Any Zone. The use of any building, structure, location, premises or land for recreational production, processing or retailing is not currently allowed in the City, and such uses and activities are not permitted use(s) in any zone. So long as this Ordinance remains in effect, the City shall not, determine either through interpretation or otherwise, that the use of any building, structure, location, premises or land as a one of these prohibited uses may be permitted in any zone.

20.08.050. No Vested or Nonconforming Rights. Neither this Ordinance nor any other City Ordinance, City action, failure to act, statement, representation, certificate, approval, or permit issued by the City or its departments, or their respective representatives, agents, employees, attorneys or assigns, shall create, confer, or convey any vested or nonconforming right or benefit regarding any marijuana business, or recreational marijuana producer, processor or retailer, even if licensed by the State of Washington.

20.08.060. Violations.

Any violations of this Ordinance may be enforced as set forth in chapter 18.04.130 (Enforcement of Zoning Code Violations), or as applicable, the Uniform Controlled Substances Act, chapter 69.50 RCW. In addition, violations of this Ordinance may be deemed to be a public nuisance and may be abated by the City under the procedures set forth in state law for the abatement of public nuisances.

Section 2. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 3. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 4. This Ordinance shall take effect and be in full force and effect five days after publication, as provided by law.

PASSED by the City Council of the City of Black Diamond on this 5th day of February, 2015.

Carol Benson (Mayor)

ATTEST/AUTHENTICATED:

Brenda Martinez (City Clerk)

APPROVED AS TO FORM:
Office of the City Attorney

Carol Morris (City Attorney)

PUBLISHED:
EFFECTIVE DATE:

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT:	Agenda Date: February 5, 2015	
AB15-018	AB15-018	
Ordinance No. 15-1048, adopting a complete prohibition on medical marijuana land-uses within the City of Black Diamond.	Mayor Carol Benson	
	City Administrator	
	City Attorney Carol Morris	Reviewed
	City Clerk – Brenda L. Martinez	
	Com Dev/Nat Res – Aaron Nix	X
	Finance – May Miller	
	MDRT/Economic Dev – Andy Williamson	
	Police – Chief Kiblinger	
Cost Impact (see also Fiscal Note): N/A	Public Works – Seth Boettcher	
Fund Source: N/A	Court – Stephanie Metcalf	
Timeline: Effective, in accordance with the date established within this Ordinance		
Agenda Placement: ☒ Mayor ☒ Two Councilmembers ☐ Committee Chair ☐ City Administrator		
Attachments: Ordinance No. 15-1048		
SUMMARY STATEMENT: On October 3, 2013, the Council adopted Ordinance No. 13-1011, establishing a six-month moratorium upon the establishment, location, operation, licensing, maintenance or continuation of medical cannabis collective gardens or dispensaries. At the March 6, 2014 meeting Council conducted a public hearing on a moratorium that would prohibit the establishment, location, operation, licensing, maintenance, or continuation of any medical cannabis collective garden or any medical marijuana dispensary. The City required time to conduct appropriate research to understand the impacts and potential liabilities under federal law, and to determine an appropriate regulatory framework for any cannabis-related uses that may be authorized pursuant to chapter 69.51A RCW. Medical cannabis is largely a cash business, which increases the potential risk for crime. There have been several violent crimes in Washington state related to cannabis. On the other hand, the State of Washington voters have authorized and made legal under State law, the use of medical marijuana under certain conditions. The new ordinance establishes a ban, prohibiting the establishment, location, operation, licensing, maintenance, or continuation of any medical cannabis collective garden or any medical marijuana dispensary. At their March 6, 2014 meeting, Council directed staff to prepare an ordinance for a 1-year moratorium, with a work plan. This work plan allowed City staff, the Planning Commission and the City Council the necessary time to consider changes to State law from the 2014 legislative session. The Planning Commission held a Public Hearing on a Medical Marijuana land use prohibition		

on January 6, 2015, where one comment was received. Subsequent discussion by the Planning Commission rendered a recommendation of a proposed prohibition on Medical Marijuana land-uses to the City Council, with consideration by the Council to lift the ban if subsequent law changes and issues are addressed adequately to alleviate the Planning Commissions' concern's with regard to these uses.

FISCAL NOTE (Finance Department): N/A

COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: The Planning and Community Services Committee met to discuss this issue at its' meeting on January 13, 2015 and recommended that it be forwarded to the full City Council at their February 5, 2015 meeting, for adoption.

RECOMMENDED ACTION: **MOTION to adopt Ordinance No. 15-1048, adopting a complete prohibition on the siting, establishment, growing, cultivation, operation or licensing of any property, structures, uses or businesses relating to medical marijuana or medical marijuana cultivation (whether individual or group cultivation), storage, sale, delivery, exchange or bartering.**

RECORD OF COUNCIL ACTION

<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
February 5, 2015		

CITY OF BLACK DIAMOND, WASHINGTON
ORDINANCE NO. 15-1048

AN ORDINANCE OF THE CITY OF BLACK DIAMOND, WASHINGTON, RELATING TO THE MEDICAL USE OF MARIJUANA, ADOPTING A COMPLETE PROHIBITION ON THE SITING, ESTABLISHMENT, GROWING, CULTIVATION, OPERATION OR LICENSING OF ANY PROPERTY, STRUCTURES, USES OR BUSINESSES RELATING TO MEDICAL MARIJUANA OR MEDICAL MARIJUANA CULTIVATION (WHETHER INDIVIDUAL OR GROUP CULTIVATION), STORAGE, SALE, DELIVERY, EXCHANGE OR BARTERING; ADOPTING FINDINGS TO SUPPORT THE PROHIBITION, DESCRIBING THE MANNER IN WHICH VIOLATIONS WILL BE ENFORCED, AND ADDING A NEW CHAPTER 20.04 TO THE BLACK DIAMOND MUNICIPAL CODE.

WHEREAS, since 1970, federal law has prohibited the manufacture and possession of marijuana as a Schedule I drug, based on the federal government's categorization of marijuana as having a "high potential for abuse, lack of any accepted medical use, and absence of any accepted safety for use in medically supervised treatment." *Gonzales v. Raich*, 545 U.S. 1, 14 (2005), Controlled Substance Act (CSA), 84 Stat. 1242, 21 U.S.C. 801 et seq; and

WHEREAS, the voters of the State of Washington approved Initiative 692 (codified as RCW 69.51A in November 1998); and

WHEREAS, the intent of Initiative 692 was that qualifying "patients with terminal or debilitating illnesses who, in the judgment of their physicians, would benefit from the medical use of marijuana, shall not be found guilty of a crime under state law," (RCW 69.51A.005), but that nothing in the law "shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of marijuana for non-medical purposes" (RCW 69.51A.020); and

WHEREAS, the Washington State Legislature passed ESSSB 5073 in 2011, which directed employees of the Washington State Departments of Health and Agriculture to authorize and license commercial businesses that produce, process or dispense cannabis; and

WHEREAS, this bill required that the Department of Health develop a secure registration system for licensed producers, processors and dispensers, but these provisions, together with many others relating to dispensaries and definitions, were vetoed by the Governor; and

WHEREAS, ESSSB 5073 provided that a qualifying patient or his/her designated care provider are presumed to be in compliance, and not subject to criminal or civil sanctions/penalties/consequences, under certain defined circumstances (possession of a limited number of plants or usable cannabis, cultivation of a limited number of plants in the qualifying patient or designated care provider's residence or in a collective garden); and

WHEREAS, Washington's Governor vetoed all of the provisions relevant to medical marijuana dispensaries in ESSSB 5073 but left the provisions relating to cultivation of marijuana for medical use by qualified patients individually within their residences and in collective gardens; and

WHEREAS, ESSSB 5073 was codified in chapter 69.51A RCW; and

WHEREAS, RCW 69.51A.130 allows local jurisdictions to adopt zoning requirements, business license requirements, health and safety requirements, and to impose business taxes on the production, processing or dispensing of medical cannabis or cannabis products; and

WHEREAS, In November of 2012, the Washington voters passed I-502, which directed the Washington State Liquor Control Board (LCB) to regulate recreational marijuana by licensing and taxing recreational marijuana producers, processors and retailers; and

WHEREAS, the regulatory scheme in I-502 required the LCB to adopt rules before December of 2013 to address the methods for producing, processing and packaging of recreational marijuana, to establish security requirements for retail outlets, retail outlet locations and hours of operation, labeling requirements and method of transport of product throughout the state, taxing of marijuana-related activities, creation of a dedicated fund is created, consisting of marijuana excise taxes, license fees, penalties and other income: and

WHEREAS, on the LCB has now issued the new regulations (which appear in chapter 314-55 WAC), and which: prohibits the establishment of recreational marijuana businesses within 1,000 feet of certain identified sensitive uses, require criminal history background checks for licensees, establish qualifications for licensees, limits the amount of space available for recreational marijuana production, describes the manner in which marijuana growing may take place, limits the average inventory on the licensed premises at any time, limits the number of retailers within counties and cities within the counties based on estimated consumption and population data, establishes insurance requirements for licensees, describes the security requirements, requires employees to wear badges, requiring alarm and surveillance systems on the licensed premises, requires that licensees track marijuana from seed to sale, establishes the manner in which free samples of marijuana may be provided, prohibits the sale of soil amendments, fertilizers and other crop production aids, identifies transportation requirements, sign requirements, recordkeeping requirements, identifies a mechanism

for enforcement of violations, including the failure to pay taxes, specifies marijuana infused product serving sizes, maximum number of servings and limitations on transactions, identifies marijuana waste disposal restrictions, describes the process for quality assurance testing, extraction and the requirements for packaging and labeling, describes advertising limitations, explains the process for licensing suspension, revocation and penalties for violations; and

WHEREAS, the detailed licensing and comprehensive regulatory system for recreational marijuana in I-502 is substantially different from what little remains in chapter 69.51A RCW to regulate medical marijuana after the Governor's veto; and

WHEREAS, on August 29, 2013, the U.S. Department of Justice (DOJ) issued a Memorandum to all United States Attorneys, acknowledging that several states had adopted laws authorizing marijuana production, distribution and possession by establishing a regulatory scheme for these purposes; and

WHEREAS, in this Memo, the DOJ advised that in recent years, the DOJ has "focused its efforts on certain law enforcement priorities that are particularly important to the federal government," such as: (a) preventing the distribution of marijuana to minors; (b) preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels; (c) preventing the diversion of marijuana from states where it is legal under state law in some form to other states; (d) preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity; (e) preventing violence and the use of firearms in the cultivation and distribution of marijuana; (f) preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use; (g) preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and (h) preventing marijuana possession or use on federal property; and

WHEREAS, in this Memo, the DOJ warned that "[i]f state enforcement efforts are not sufficiently robust to protect against the harms [identified above] the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms"; and

WHEREAS, in this Memo, the DOJ warned that a regulatory system adequate to this task "must not only contain robust controls and procedures on paper, it must also be effective in practice"; and

WHEREAS, in this Memo, the DOJ advised that "in exercising prosecutorial discretion, prosecutors should not consider the size or commercial nature of a marijuana operation alone as a proxy for assessing whether marijuana trafficking implicates the Department's enforcement priorities [listed above]" and that federal prosecutors "should continue to review marijuana cases on a case-by-case basis and weigh all available information and evidence, including, but not limited to, whether the

operation is demonstrably in compliance with a strong but effective state regulatory system”; and

WHEREAS, a comparison of the LCB's proposed rules on recreational marijuana and chapter 69.51A RCW on medical marijuana demonstrates that there is virtually no state regulatory system for medical marijuana, and that even if local governments decided to adopt the type of medical marijuana system that would protect against the harms identified in the federal government's enforcement priorities, most local governments do not have the resources to be able to enforce such regulations; and

WHEREAS, after considering the August 29, 2013 DOJ Memo, the City has determined that even if the City decided to adopt an ordinance on the subject of medical marijuana in order to provide the type of regulatory system that the DOJ might find adequate to protect against the harms identified in the federal government's enforcement priorities, the City does not have the resources to enforce such a system; and

WHEREAS, on January 16, 2013, the Washington State Attorney General's Office issued an opinion, which determined that local governments may decide to either zone or ban recreational marijuana uses within their jurisdictions; and

WHEREAS, on March 31, 2014, the Washington State Court of Appeals issued a decision in *Cannabis Action Coalition v. City of Kent*, 180 Wash. App. 455, 322 P.3d 1246 (2014), in which the Court determined that the “plain language of ESSSB 5073, as enacted, does not legalize medical marijuana or collective gardens,” and “instead, it provides a defense to an assertion that state criminal laws were violated,” *id.*, 180 Wash. App. at 472; and

WHEREAS, on October 3, 2013, the City passed Ordinance 13-1011, establishing a six month moratorium on the issuance of permits or licenses for medical marijuana collective gardens; and

WHEREAS, on March 20, 2014, the City passed Ordinance 14-1023, establishing a twelve month moratorium on the issuance of permits or licenses for medical marijuana collective gardens; and

WHEREAS, on January 6, 2015, the Planning Commission held a public hearing on this draft ordinance; and

WHEREAS, the Planning Commission did recommend approval of this draft ordinance; and

WHEREAS, on February 5, 2014, the Council considered this draft ordinance during its regular meeting;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND
ORDAINS AS FOLLOWS:

Section A. The following new chapter 20.04 is hereby adopted in the Black Diamond Municipal Code, to read as follows:

Chapter 20.04

MEDICAL MARIJUANA PROHIBITED

Sections:

20.04.010	Findings.
20.04.020	Definitions.
20.04.030	Prohibited Activities.
20.04.040	Uses Not Permitted in Any Zone.
20.04.050	Violations.
20.04.060	Enforcement.

20.04.010 Findings. The Council adopts all of the “whereas” sections of this Ordinance as findings to support this ban on medical marijuana, as well as the following:

A. The purpose of this Ordinance is to enact a ban medical cannabis or medical marijuana, which explicitly prohibits medical marijuana dispensaries and prohibits medical marijuana collective gardens (including those defined in RCW 69.51A.085). This prohibition will be enforced until such time as the Washington State Legislature acts to adopt a regulatory and enforcement system for medical marijuana uses that satisfies the enforcement priorities established by the federal government. Once the Washington State Legislature acts, the City shall evaluate the new medical marijuana laws to determine whether any local regulation of medical marijuana collective gardens is necessary, and if so, whether the City has the desire or the resources to adopt and enforce such local regulations. This ban may only be lifted by the City Council in an ordinance specifically adopted for this purpose.

B. It is also the purpose of this Ordinance to stem the negative impacts and secondary effects associated with the marijuana uses (on-going or predicted) in the City, including but not limited to the extraordinary and unsustainable demands that have been or will be placed upon scarce City policing, legal, policy and administrative resources; neighborhood disruption, increased transient visitors and intimidation; the exposure of school-age children and other sensitive residents to medical marijuana, illegal sales to both minors and adults; fraud in issuing, obtaining or using medical marijuana prescriptions and murders, robberies, burglaries, assaults, drug trafficking and other violent crimes. The State of Washington has adopted a strict regulatory and enforcement system for the cultivation, processing and sale of recreational marijuana, but there is no state-wide regulatory scheme for medical marijuana. The City

acknowledges the federal government's recently medical marijuana enforcement efforts involving individuals/entities who/that attempted to avoid compliance with the more onerous recreational marijuana system by illegally operating medical marijuana collective gardens. Until new laws are adopted to bridge the gap between recreational and medical marijuana uses, and there is strict enforcement of these laws, the negative impacts and secondary effects described above are likely to occur/continue.

C. No part of this Ordinance is intended to or shall be deemed to conflict with federal law, including but not limited to, the Controlled Substances Act, 21 U.S.C. Section 800 *et seq.*, the Uniform Controlled Substances Act (chapter 69.50 RCW) nor to otherwise permit any activity that is prohibited under either Act, or any other local, state or federal law, statute, rule or regulation. This Ordinance is not intended to address or invite litigation over the question whether the State of Washington's medical marijuana laws (or this City's medical marijuana laws) satisfy the federal government's enforcement priorities. Nothing in this Ordinance shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of medical cannabis or recreational marijuana in any manner not authorized by chapter 69.51A RCW or chapter 69.50 RCW. Nothing in this Ordinance shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or that creates a nuisance, as defined herein. It is the intention of the City Council that this Ordinance be interpreted to be compatible with federal and state enactments and in furtherance of the public purposes that those enactments encompass.

20.04.020. Definitions. For purposes of this Ordinance, the following definitions apply:

A. "Cannabis" means all parts of the plant *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. For the purposes of this ordinance, "cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted there from, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. The term "cannabis" includes cannabis products and useable cannabis.

B. "Cannabis products" means products that contain cannabis or cannabis extracts, have a measurable THC concentration greater than three-tenths of one percent, and are intended for human consumption or application, including, but not limited to, edible products, tinctures, and lotions. The term "cannabis products" does not include useable cannabis. The definition of "cannabis products" as a measurement of THC concentration only applies to the provisions of this ordinance and shall not be considered applicable to any criminal laws related to marijuana or cannabis

C. "Collective Garden" means those gardens defined in RCW 69.51A.085, or any other medical marijuana cultivation activity, whether it is conducted individually or collectively.

D. "Cultivation" means the planting, growing, harvesting, drying or processing of marijuana plants or any part thereof.

E. "Deliver or Delivery" means the actual or constructive transfer from one person to another of a substance, whether or not there is an agency relationship.

F. "Dispensary, Medical Marijuana" means: any location that does not meet the definition of a "Collective Garden" and does not have a license from the Liquor Control Board of the State of Washington for a marijuana producer, processor or retailer pursuant to I-502, where medical cannabis or marijuana is processed, dispensed, selected, measured, compounded, packaged, labeled or sold to a qualified patient, designated provider or any other member of the public. It also includes any vehicle or other mode of transportation, stationary or mobile, which is used to transport, distribute, deliver, sell or give away medical cannabis or marijuana to a qualified patient, designated provider or any other member of the public.

G. "Dispense" means the interpretation of a prescription or order for medical cannabis, and pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare the prescription or order for delivery.

H. "Indoors" means within a fully enclosed and secure structure that complies with the Washington State Building Code, as adopted by the City, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached.

I. "Legal parcel" means a parcel of land for which one legal title exists. Where contiguous legal parcels are under common ownership or control, such legal parcels shall be counted as a single parcel for purposes of this ordinance.

J. "Marijuana" means all parts of the plant Cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. For the purposes of this Ordinance, "cannabis" or "marijuana" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

K. "Marijuana-infused products" means products that contain marijuana or marijuana extracts and are intended for human use. The term "marijuana-infused products" does not include useable marijuana.

L. "Marijuana, Usable" means dried marijuana flowers. The term "usable marijuana" does not include marijuana-infused products.

M. "Medical (or medicinal) use of cannabis or marijuana" means the production, possession, or administration of marijuana, as defined in RCW 69.50.101(r).

N. "Outdoors" means any location that is not "indoors" within a fully enclosed and secure structure as defined herein.

O. "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision of agency or any other legal or commercial entity.

P. "Plant" means an organism having at least three distinguishable and distinct leaves, each leaf being at least three centimeters in diameter, and a readily observable root formation consisting of at least two separate and distinct roots, each being at least two centimeters in length. Multiple stalks emanating from the same root ball or root system shall be considered part of the same single plant.

Q. "Process" means to handle or process cannabis in preparation for medical or recreational use.

R. "Processor, Marijuana" means a person licensed by the State Liquor Control Board to process marijuana into useable marijuana and marijuana-infused products, package and label usable marijuana and marijuana-infused products for sale in retail outlets, and sell usable marijuana and marijuana-infused products as wholesale to marijuana retailers.

S. "Producer, Marijuana" means a person licensed by the State Liquor Control Board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

T. "Produce or Production" means to manufacture, plant, grow or harvest cannabis or marijuana.

U. "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; premises where goods and services are offered to the public for retail sale; public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages, and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, buses, ferries,

and other public conveyances of all kinds and character, and the depots, stops, and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

V. "Retailer, Marijuana" means a person licensed by the State Liquor Control Board to sell usable marijuana and marijuana-infused products in a retail outlet.

W. "Retail outlet" means a location licensed by the State Liquor Control Board for the retail sale of useable marijuana and marijuana-infused products.

X. "THC concentration" means percent of tetrahydrocannabinol content per weight or volume of useable cannabis or cannabis product.

Y. "Useable cannabis or usable marijuana" means dried flowers of the *Cannabis* plant. The term "usable cannabis or usable marijuana" does not include marijuana-infused products or cannabis products.

20.04.030. Prohibited Activities.

A. It is unlawful to own, establish, operate, use or permit the establishment or operation of a medical marijuana dispensary, or to participate as an employee, contractor, agent or volunteer, or in any other manner or capacity in any marijuana business that does not have a license from the Liquor Control Board of the State of Washington.

B. It is unlawful to own, establish, operate, use, participate in or permit the establishment or operation of a medical marijuana collective garden, or to participate as an employee, contractor, agent or volunteer, or in any other manner or capacity in any collective garden.

C. It is unlawful to lease, rent or otherwise allow any medical marijuana dispensary, or any medical marijuana collective garden outdoors, indoors, in any building, structure, premises, location, parcel or land in the City.

20.04.040. Use Not Permitted In Any Zone. The use of any building, structure, location, premises, parcel or land for a medical marijuana dispensary or a collective garden is not allowed in the City, and medical marijuana dispensaries and collective gardens are not permitted use(s) in any zone. So long as this Chapter remains in effect, the City shall not, determine either through interpretation or otherwise, that the use of any building, structure, location, premises or land as a medical marijuana dispensary or collective garden may be permitted in any zone.

20.04.050. No Vested or Nonconforming Rights. This Chapter prohibits medical marijuana dispensaries and collective gardens. Neither this Chapter nor any other City Ordinance, City action, failure to act, statement, representation, certificate, approval, or

permit issued by the City or its departments, or their respective representatives, agents, employees, attorneys or assigns, shall create, confer, or convey any vested or nonconforming right or benefit regarding any medical marijuana business, marijuana business or collective garden.

20.04.060. Violations.

Any violations of this Chapter may be enforced as set forth in Ordinance No. 18.04.130 (Enforcement of Zoning Code Violations) or as applicable, the Uniform Controlled Substances Act, chapter 69.50 RCW. In addition, violations of this Chapter may be deemed to be a public nuisance and may be abated by the City under the procedures set forth in state law for the abatement of public nuisances.

Section 2. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 3. Effective Date. This ordinance shall be effective five days after publication of an approved summary, which shall consist of the title.

PASSED by the City Council of the City of Black Diamond this 5th day of February, 2015.

Carol Benson (Mayor)

ATTEST/AUTHENTICATED:

Brenda Martinez (City Clerk)

APPROVED AS TO FORM:
Office of the City Attorney

City Attorney

PUBLISHED:
EFFECTIVE DATE: