

**ORDINANCE NO. 08-857**

**AN ORDINANCE OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, CREATING A HEARING EXAMINER POSITION FOR CERTAIN LAND USE MATTERS, ADDING A NEW CHAPTER 2.30 AND NEW SECTIONS 17.16.040 AND 17.36.080 TO THE BLACK DIAMOND MUNICIPAL CODE, AMENDING SECTIONS 2.24.020, 17.14.030, 17.14.050, 17.15.010, 17.15.030, 17.16.010(C), 17.16.020, 17.16.030, 17.32.050(D), 17.32.110, 18.12.040, 18.12.045, 18.12.050, 18.16.010, 18.16.015, 18.16.020, 18.16.030, 18.28.010, 18.28.020, 18.28.030, 18.28.050, 18.28.060, 18.32.020, 18.32.030, 18.32.050, 18.32.060, 18.32.080, 18.32.090, 18.54.040, 18.92.040 AND 19.04.250(C) OF THE BLACK DIAMOND MUNICIPAL CODE RELATING TO THE HEARING EXAMINER, DELETING SUBSECTION 17.20.040(G) AND REPEALING SECTIONS 18.28.040, 18.28.045 AND 18.32.040.**

WHEREAS, RCW 35A.63.170 and RCW 58.17.330 authorize local governments to adopt a hearing examiner system to hear and decide land use matters; and

WHEREAS, the City Council finds that the use of a hearing examiner will provide improved compliance with legal requirements, including due process, appearance of fairness, and record preparation; and

WHEREAS, on April 3, 2008 the City Council held a public hearing to generally consider instituting a hearing examiner system in accordance with RCW 35A.63.130, and

WHEREAS, based on the public hearing and for the above-stated reasons, the City Council has decided to institute a hearing examiner system as specifically set forth below; now, therefore

THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, ORDAINS AS FOLLOWS:

SECTION 1. Section 2.24.020 of the Black Diamond Municipal Code is hereby amended to read as follows:

**2.24.020 Powers and duties.**

A. The planning commission shall perform the function of a planning agency as set forth in RCW 35A.63. The planning commission shall be an advisory body to the

city council on matters relating to the city’s comprehensive plan and land use regulations including, additions and amendments thereto. The planning commission shall review such other matters and take such further action as the city council may direct from time to time by motion, resolution, or ordinance.

SECTION 2. A new chapter 2.30 titled “Hearing Examiner” is hereby added to the Black Diamond Municipal Code.

SECTION 3. A new section 2.30.010 is hereby added to the Black Diamond Municipal Code to read as follows:

**2.30.010 Creation and Purpose.**

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

B. Purpose. The purpose of this chapter is to provide an efficient and effective land use regulatory system; provide for consistency and predictability in certain land use decision making; establish clear and understandable application of policies and regulations adopted by the City; and provide for fair and impartial determinations of land use decisions while ensuring procedural due process.

SECTION 4. A new section 2.30.020 is hereby added to the Black Diamond Municipal Code to read as follows:

**2.30.020 Definitions**

As used in this chapter, unless the context clearly requires otherwise, the words defined in this section shall have the indicated meanings.

A. “Department” means the community development department for the City of Black Diamond.

B. “Director” means the community development director for the City of Black Diamond.

C. “Examiner” means the regular hearing examiner or hearing examiner pro tem for the City of Black Diamond.

SECTION 5. A new section 2.30.030 is hereby added to the Black Diamond Municipal Code to read as follows:

**2.30.030 Appointment and Term.** The examiner shall be appointed by the Mayor with confirmation by the Council, and shall serve at the pleasure of the Mayor. The examiner shall be appointed based on his or her qualifications for the duties of the office and shall have the necessary training and experience in land use and related

legal matters to conduct administrative or quasi-judicial hearings, and to render decisions according to law. The examiner shall hold no other classified, appointive, or elected position in City government. The examiner shall suggest an examiner pro tem to serve in the event of his/her absence or disability, or in the event of a conflict of interest. The appointment of an examiner pro tem is expected to be infrequent in nature. The Mayor will confirm the appointment of an examiner pro tem, in writing, and specify the term of service. Confirmation of appointment of an examiner pro tem is not required by the Council. The examiner pro tem will be entitled to the same compensation as the examiner during his/her term of service.

SECTION 6. A new section 2.30.040 is hereby added to the Black Diamond Municipal Code to read as follows:

**2.30.040 Compensation.** The examiner may be retained on a professional service contract on terms deemed appropriate by the Mayor with any necessary approval for budget purpose, by the Council. The contract shall specify that the examiner serves at the pleasure of the Mayor, and that the examiner has authority to suggest appointment of an examiner pro tem to the Mayor, to serve in the absence or disability, or in the event of a conflict of interest of the examiner.

SECTION 7. A new section 2.30.050 is hereby added to the Black Diamond Municipal Code to read as follows:

**2.30.050 Conflict of Interest.**

A The examiner shall not conduct or participate in any hearing or decision in which:

1. the examiner has a direct or indirect personal interest, or;
2. the examiner has a beneficial interest, directly or indirectly, in any aspect of the matter on which he or she is called upon to issue a decision, or
3. the examiner has a direct or indirect familial interest which might influence or interfere with his or her decision-making process or give rise to a violation of the appearance of fairness doctrine as codified in Ch. 42.36 RCW as written or hereafter amended, and the common law.

B. The examiner shall disclose matters involving ex parte contacts, conflicts of interest or appearance of fairness issues prior to or at the beginning of any matter or immediately upon becoming aware of the need for such disclosure. The examiner shall recuse him or herself if the examiner believes his or her review of the matter would represent a conflict of interest or violate the appearance of fairness doctrine as set forth herein.

C. In the event the examiner recuses him or herself, an examiner pro tem will be appointed, according to BDMC 2.30.030.

SECTION 8. A new section 2.30.060 is hereby added to the Black Diamond Municipal Code to read as follows:

**2.30.060 Improper Influence.** No city official either elected or appointed shall attempt to influence the examiner in any matter officially before him or her so as to constitute misconduct by a public officer under Ch. 42.20 RCW, as written or hereafter amended, or that would constitute a violation of the appearance of fairness doctrine as codified in Ch. 42.36 RCW, as written or hereafter amended.

SECTION 9. A new section 2.30.070 is hereby added to the Black Diamond Municipal Code to read as follows:

**2.30.070 Organization and Rules.**

A. Organization. The examiner operates independently of any department of the city, but will receive such administrative assistance from the director as is necessary to carry out the functions of his or her office.

B. Rules. The examiner shall have the power to prescribe rules not in conflict with this chapter for procedural matters including adopting procedures for pre-hearing conferences, the scheduling and conduct of hearings, the submission of legal motions, briefs and other written documents, the scheduling of discovery, issuance of subpoenas for the attendance of witnesses or the production of information, receipt of evidence, and issues relating to settlement.

SECTION 10. A new section 2.30.080 is hereby added to the Black Diamond Municipal Code to read as follows:

**2.30.080 Powers.**

A. General. The examiner shall receive and examine all information in the official file, conduct hearings and administer preparation of the official record and issue a written a recommendation or a written decision on the matter. The examiner is authorized to impose conditions on the applicant's proposal, consistent with federal, state and local law. The examiner is authorized, as applicable, to hear and decide issues related to a taking of private property for public use without just compensation, and/or the denial of substantive due process of law, in addition to challenges to imposition of conditions or exactions on a project, whether based on constitutional, statutory or common law.

B. Specific. In addition to the general authority as granted herein, the examiner shall have the specific authority granted to him in other chapters of the Black Diamond Municipal Code.

C. The City Council may, from time to time, grant to the examiner additional powers and authority as the Council deems appropriate, consistent with state law and city code, ordinances and resolutions.

SECTION 11. A new section 2.30.090 is hereby added to the Black Diamond Municipal Code to read as follows:

**2.30.090 Staff report to the examiner.** The department shall coordinate and assemble the reviews of other city departments and governmental agencies having an interest in the subject application and shall prepare a report summarizing the factors involved and the department's findings, conclusions, and recommendations. The report shall be filed with the examiner and copies thereof shall be mailed to the applicant and made available for public inspection at least five working days prior to the scheduled hearing, unless otherwise provided in the ordinance governing the specific application or appeal.

SECTION 12. A new section 2.30.100 is hereby added to the Black Diamond Municipal Code to read as follows:

**2.30.100 Public hearing.** Before rendering a decision or recommendation on any application or appeal, the examiner shall hold one open record public hearing thereon. The department shall, in coordination with the examiner, be responsible for assigning a date and assuring due notice of public hearing for each such application or appeal. Notice of the time and place of the public hearing shall be given as provided in the ordinance governing the application or appeal. If none is specifically set forth, such notice shall be given at least 10 days prior to such hearing. The public hearing shall be conducted in accordance with the ordinance governing the application or appeal and such other rules as the hearing examiner may adopt pursuant to BDMC 2.30.080

SECTION 13. A new section 2.30.110 is hereby added to the Black Diamond Municipal Code to read as follows:

**2.30.110 Examiner's decision.**

A. All decisions or recommendations of the examiner must be supported by findings of fact and conclusions of law. The findings of fact must be supported by substantial evidence in the record and the conclusions of law must be based upon the policies of the comprehensive plan, subdivision regulations, environmental regulations, the standards set forth in the various land use codes of the city, or any

other relevant plan, regulation, federal or state law, case law, Growth Management Hearings Board decisions, or any other applicable law. Decisions or recommendations of the examiner may be to approve, conditionally approve, or deny the application or appeal.

B. All decisions or recommendations of the examiner will be rendered within ten working days following the conclusion of all testimony and hearings and closing of the record, unless otherwise provided in the ordinance governing the specific application or appeal, or unless a longer period is mutually agreed to by the applicant or appellant and the examiner. Upon issuance of the examiner's decision, the examiner will transmit a copy of the decision to the director and, by certified mail, to the applicant or appellant and by regular mail to other parties of record.

SECTION 14. A new section 2.30.120 is hereby added to the Black Diamond Municipal Code to read as follows:

**2.30.120 Reconsideration.**

A. Any party of record may, within seven working days of the date of the examiner's written decision, file with the department a written request for reconsideration based on any one of the following grounds: errors of procedure, errors of law or fact, error in judgment, or the discovery of new evidence which was not reasonably available at the open record public hearing.

B. The request shall set forth the specific errors or new information relied upon. The department shall forward the request for reconsideration to the examiner within three working days. Upon receipt of a request for reconsideration, the examiner will review the request in light of the record and take such further action as is deemed proper, including, but not limited to: denying the request; granting the request; reopening the record and public hearing process, and may render a revised decision. The examiner shall take such action as he deems appropriate within 10 days of receipt of the request. The decision of the examiner will be subject to reconsideration only one time, even if the examiner reverses or modifies the original decision.

C. The filing of a request for reconsideration shall effectively stay the appeal period until the examiner issues his decision on the request.

SECTION 15. A new section 2.30.130 is hereby added to the Black Diamond Municipal Code to read as follows:

**2.30.130 Effect of Decision.** Unless specifically provided for elsewhere in this code or in another applicable ordinance, the decision of the examiner shall be the

final administrative decision of the city and may be appealed by a party of record with standing to the King County superior court pursuant to Chapter 36.70C RCW. A petition for a judicial appeal must be filed within 21 days of the issuance of a decision.

SECTION 16. Section 17.14.030 of the Black Diamond Municipal Code is amended to read as follows:

A subdivision application seeking bonus density shall be reviewed by the hearing examiner as part of the hearing examiner's subdivision review process. Where approving bonus density is recommended by the hearing examiner, the specific elements found to satisfy the city's density bonus standards shall be set forth in the hearing examiner's findings and decision.

SECTION 17. The first paragraph of Section 17.14.050 of the Black Diamond Municipal Code is amended to read as follows:

The hearing examiner shall review each subdivision application to determine the number of density bonus elements that have been incorporated by the applicant. The following are the density bonus elements:

SECTION 18. The first paragraph of Section 17.15.010 of the Black Diamond Municipal Code is amended to read as follows:

The requirements set forth in this chapter are substantive standards that must be met in order for a preliminary plat to be approved. The hearing examiner, in making its decision whether the plat should be approved, approved with conditions, or denied, shall make findings as to each of the approval criteria set forth in this chapter. The hearing examiner's decision shall be final action, unless an appeal is timely filed to the City Council.

SECTION 19. The first paragraph of Section 17.15.030 of the Black Diamond Municipal Code is amended to read as follows:

A site inspection may be made by the city council and/or the hearing examiner in order to assist them in their deliberations so long as said inspection occurs as part of a public meeting, with actual notice to the applicant and all persons of record at the open record public hearing, and no public input is allowed during the inspection.

SECTION 20. Section 17.16.010(C) of the Black Diamond Municipal Code is amended to read as follows:

C. SEPA Determination and Staff Report. Each department head shall, within twenty-one days after receipt, complete his or her review of the proposed subdivision and transmit written comments and recommendations to the city planner. At the conclusion of the SEPA process, staff will finish its detailed review of the proposal and will make a formal SEPA determination, which may include a public comment period. Staff will also prepare a written staff report to the hearing examiner. This review may include requesting additional information, or proposal revisions, from the applicant, in which case any mandated review timelines shall be suspended.

SECTION 21. Section 17.16.020 of the Black Diamond Municipal Code is amended to read as follows:

A. Public Hearing Required. Upon completion of staff review and the SEPA appeal period, the city clerk-treasurer shall schedule the preliminary plat for public hearing before the hearing examiner, allowing for adequate public hearing notification and issue a notice of public hearing.

B. Notice of Public Hearing. Notice of the public hearing shall include the purpose, date, time and place of the public hearing and a description of the location of the property which shall be both a vicinity sketch and a narrative location description of the property to be platted. Notice shall be given in the following manner:

1. Publication of at least one notice not less than fourteen days prior to the hearing in a newspaper of general circulation within the city:

2. Posting in at least three conspicuous places adjacent to the boundary of the proposed subdivision and visible from a public right-of-way, not less than fourteen days prior to the hearing. If the owner of the property which is proposed to be subdivided owns another parcel of the property which lies adjacent to such property, notice under this section shall be placed adjacent to the boundaries of any such adjacently located parcels of property owned by the owner of the property proposed to be subdivided.

3. Mailing notice to all owners of record of real property adjacent to or within five hundred feet of the proposed subdivision, according to the records of the county treasurer, not less than fourteen days prior to the hearing. If the applicant or owner of the property which is proposed to be subdivided owns, or has any legal interest in any entity that owns, other property adjacent to the property proposed to be subdivided, notice shall be mailed to the owners of all property adjacent to or within five hundred feet of said adjacent property in which the applicant or owner has an interest;



4. If the proposed subdivision is adjacent to the city-county boundary, notice shall be given to the city council;

5. If the proposed subdivision is located adjacent to the right-of-way of a state highway or within two miles of the boundary of a state or municipal airport, notice shall be given to the Secretary of Transportation; and

6. If the proposed subdivision is located in an approved MPD, the city shall merge its public notice of the required preliminary plat design review with the public notice of the preliminary plat hearing, utilizing the notice requirements for the preliminary plat hearing, as set forth above;

C. Public Hearing. At the public hearing, the hearing examiner shall consider all relevant evidence to determine that the preliminary plat be approved or disapproved by the city council. Any hearing may be continued at the discretion of the hearing examiner in order to allow all relevant public input to be received. Records of the hearing examiner hearings on preliminary plats shall be kept by the city clerk and shall be open to public inspection.

SECTION 22. Section 17.16.030 of the Black Diamond Municipal Code is amended to read as follows:

A. If the hearing examiner finds that the proposed plat makes appropriate provisions for the public health, safety and general welfare, for such open spaces, drainage ways, water supplies, sanitary wastes, parks, playgrounds, sites for schools and school grounds, and other provisions required by city code, regulations and other provisions required by city code, regulations and any applicable development agreement, and it finds that the public use and interest will be served by the platting of the subdivision, then it shall be approved. If the hearing examiner finds that the proposed plat does not make such appropriate provisions or that the public use and interest will not be served, then the hearing examiner shall impose additional conditions so that appropriate provisions will be made and the public use and interest is served, or if, additional conditions would not be adequate to mitigate all adverse impacts and to protect the public health, safety and meet all City standards, then the examiner shall deny the proposed preliminary plat.

B. Not later than fourteen days following the close of the public hearing by the hearing examiner, the hearing examiner shall issue its decision.

C. Dedication and Improvements.

1. Conveyance of land to the city and/or construction of improvements within and/or outside the boundary of the proposed subdivision may be required as

a condition of subdivision approval. All streets, alleys and other access to the lots within the subdivision shall be conveyed to the city and shall become city property upon acceptance by the city; provided, the city council may allow a private street if it finds that the private street is the best interest of the public, that adequate provision is made for street maintenance, repair and replacement through the CCR's, and that the street will be constructed to the same standard that would apply if the street were to be public street. The hearings examiner shall not, as a condition of the approval of any plat, require a release from damages to be procured from other property owners.

2. No plat shall be approved covering any land situated in a flood control zone as provided in RCW Chapter 86.16 without the prior written approval of the Department of Ecology of the state.

3. Every decision or recommendation made under this chapter shall be made in writing and shall include findings of fact and conclusions to support the decision or recommendation. A record of all public meetings and public hearings shall be kept by the city and shall be open to public inspection.

D. Applicant Notification. Preliminary plats or any proposed subdivision and dedication shall be approved, disapproved or returned to the applicant for modification or correction within ninety days from the date of the city staff determination of a complete application, unless the applicant consents to an extension of such time period; provided, that if additional information is requested from the applicant, or an environmental impact statement is required as provided in RCW 43.21C.030, the ninety-day period shall not include the time spent by the applicant in providing the requested information, or in preparing and circulating the environmental impact statement by the city.

E. Expiration of Preliminary Plat Approval. The approval given to a preliminary plat shall expire five years following the approval date unless a proposed final plat meeting all the requirements of this chapter and the conditions of preliminary plat approval is submitted to the city. However, an applicant who files a written request with the city council at least thirty days before the expiration of this five-year period may be granted a one-year extension upon a showing by the applicant and finding by the city council that the applicant has attempted in good faith to submit the final plat within the five-year period. Any extension may be conditioned upon further review by the city council and may contain additional or altered conditions and requirements to comply with city standards current at the time of the extension. Such changes shall be made at a public meeting of the city council.

SECTION 23. A new section 17.16.040 is hereby added to the Black Diamond Municipal Code and it shall read as follows:

**17.16.040 Appeal from Hearings Examiner Decision**

A. The hearings examiner's decision on a preliminary plat application shall be final city action unless within 14 days of the date of his decision an appeal is filed with the City Clerk, appealing the decision to the City Council. The appeal shall not be deemed timely unless a complete application for appeal, on the City's appeal form, is filed with the clerk, and the appropriate filing fee paid, by 5 P.M. on the 14<sup>th</sup> day after the examiner's decision. An appeal may be filed by the City Administrator, the applicant, or any person of record before the hearings examiner.

B. The hearing before the City Council shall be a closed record appeal. The Council shall not receive new evidence, but shall only receive legal argument, either orally or in writing, and shall allow the applicant and the appellant 30 minutes to present their oral argument. If the applicant is the appellant, then the City shall have 30 minutes to present its response to the appeal.

C. The decision of the city council may be appealed by a party with standing to the King County superior court pursuant to Chapter 36.70C RCW. A petition for a judicial appeal must be filed within 21 days of the issuance of a decision.

SECTION 24. Section 17.32.050(D) of the Black Diamond Municipal Code is amended to read as follows:

D. **Hearing Examiner Review.** Short plats within an approved MPD shall be reviewed by the hearing examiner for compliance with the MPD design standards, Chapter 18.98 of the Black Diamond Municipal Code, and the approved development agreement for the MPD. This review shall include, but not be limited to, typical schematic drawings (floor plans, elevations, and exterior material samples) for the single-family residences and other structures to be built on the subdivided lots. This review shall take place at a public hearing in accordance with Chapter 2.30 of the Black Diamond Municipal Code. The city shall provide public notice of the hearing at least fourteen calendar days prior to the scheduled hearing, by publishing a notice in the city's newspaper of record, and posting the site in at least three locations visible from an adjacent public street or right-of-way. Mailed notice to individual adjacent property owners is not required. The hearing examiner shall make a decision on the short plat's compliance with the MPD design standards, including, but not limited to, the compliance of the proposed lot layout and design of the proposed residential structures. The hearing examiner shall adopt findings, conclusions and, where applicable, conditions of approval. This decision

shall be final unless appealed to the city council within twenty-one days of the city's issuance of a notice of decision.

SECTION 25. Section 17.32.110 of the Black Diamond Municipal Code is amended to read as follows:

Within fourteen calendar days following the decision for a proposed short plat, the developer or applicant may appeal the decision to the hearing examiner. The appeal shall be accomplished by filing of a written request with the city clerk for a hearing. The notice of appeal shall briefly specify the issues of the appeal. Decisions not timely appealed are deemed final and conclusive.

SECTION 26. A new Section 17.36.080 is added to the Black Diamond Municipal Code to read as follows:

**17.36.080 – Appeal to hearing examiner**

Within fourteen calendar days following the decision for a proposed lot line adjustment, the applicant may appeal the decision to the hearing examiner. The appeal shall be accomplished by filing of a written request with the city clerk for a hearing. The notice of appeal shall briefly specify the issues of the appeal. Decisions not timely appealed are deemed final and conclusive.

SECTION 27. Section 18.12.040 of the Black Diamond Municipal Code is amended to read as follows:

**18.12.040 – Appeal to hearing examiner.**

Any order, recommendation, permit, decision or determination made by a city official in the enforcement or administration of this title shall be final and conclusive, unless within ten days of the date of the decision being appealed, any person who deems himself aggrieved by said decision files an appeal with the city clerk. Unless otherwise provided herein, upon the filing of a written appeal, the city clerk shall immediately set a time and place for a public hearing before the hearing examiner to consider said appeal. A written notice thereof shall be mailed to all property owners of record within a three-hundred-foot radius of the external boundaries of the subject property. In addition, notice shall be posted on the property at least ten days prior to the hearing. Said notice shall include the time, date, place and purpose of the hearing and shall identify the subject matter property by address, written description, legal description or vicinity's sketch.

Upon completion of the public hearing, the hearing examiner shall affirm, reverse or remand for modification the decision being appealed. Within twenty-one days of the date of the public hearing, the hearing examiner shall issue its written findings, conclusions and decision setting forth the reasons for its decision. A copy of said decision shall be promptly mailed to the appellant by first class mail addressed to his or her last known address.

SECTION 28. Section 18.12.045 of the Black Diamond Municipal Code is amended to read as follows:

**18.12.045 – Appeal hearing process.**

A. The intent of the appeal process is to allow the city and the appellant to present to the hearing examiner all information that is relevant to determining whether or not the administrative action was consistent with adopted city ordinances, policies, regulations, and other conditions of approval. Due deference shall be given to the decisions of the city staff, as the officials with expertise. Accordingly, any decision that involves the exercise of discretion shall be reviewed to determine whether that discretion has been abused.

B. All evidence to be considered by the hearing examiner shall be submitted in writing, prior to the hearing. Any factual assertions shall be by sworn affidavit. The appellant shall submit his written presentation, including any legal analysis to be considered by the hearing examiner, to the city clerk no less than twenty-one days before the hearing. The city shall provide its response and legal analysis no less than fourteen days before the hearing. The appellant may then submit any factual or legal response to the city's information, no less than seven days before the hearing. No new evidence, including oral testimony, shall be considered at the hearing unless the hearing examiner determines that additional information or oral testimony is needed for it to fully consider the subject matter of the appeal. The city shall consider all relevant and credible information submitted.

C. At the hearing the appellant shall be allowed thirty minutes to present its case, based upon the record. The city shall then be allowed a thirty-minute response, based upon the record and the appellant's presentation. The appellant may reserve a portion of his time to rebut the city's presentation.

The hearing examiner may ask questions of the appellant and the city. If the hearing examiner determines that oral testimony is needed to adequately consider the issues, then the witnesses shall be sworn and the appellant and city shall have the right to examine the witnesses regarding any matters about which the council has inquired.

SECTION 29. Section 18.12.050 of the Black Diamond Municipal Code is amended to read as follows:

**18.12.050 – Appeals from decisions of the hearing examiner.** The decision of the hearing examiner may be appealed by a party with standing to the King County superior court pursuant to Chapter 36.70C RCW. A petition for a judicial appeal must be filed within 21 days of the issuance of a decision.

SECTION 30. Section 18.16.010 of the Black Diamond Municipal Code is amended to read as follows:

A variance may be granted by the hearing examiner if it can be shown that special physical circumstances affect a specific property in a manner which would make the strict application of this title unduly burdensome and would deprive the property of rights and privileges enjoyed by other properties in the same vicinity or zoning district.

A. A variance may be granted only for physical or dimensional circumstances. In no event may a variance permit a use not permitted in zoning district in which the property is located.

B. That a property may be used more profitably shall not be a consideration in any review of a variance application.

SECTION 31. Section 18.16.015 of the Black Diamond Municipal Code is amended to read as follows:

Before the hearing examiner may grant, amend or deny an application for a variance, the hearing examiner shall hold one duly noticed public hearing. Upon the filing of an application for a variance by a property owner or by a lessee, the hearing examiner shall immediately set a time and place for said public hearing to consider the application. A written notice thereof shall be mailed to all property owners of record within a three-hundred-foot radius of the external boundaries of the subject property. In addition, notice shall be posted on the property at least ten days prior to the hearing. Said notice shall include the time, date, place and purpose of the hearing and shall identify the subject matter property by address, written description, legal description or vicinity sketch.

SECTION 32. Section 18.16.020 of the Black Diamond Municipal Code is amended to read as follows:

**18.16.020 Decision of the hearing examiner.** Upon completion of the public

hearing, the hearing examiner shall grant, deny or amend the application in accordance with the provisions of this chapter. Before any variance can be granted, the hearing examiner shall make findings of facts setting forth and showing that the following circumstances exist:

A. That the granting of the proposed variance will not result in the allowance of a use which is not classified as a primary, secondary or conditional use in the district wherein the use would be located;

B. That such variance is necessary because of special circumstances relating to the size, shape, topography, location or surroundings of the subject property, in order to provide it with use rights and privileges permitted to other properties in the vicinity in the district in which the subject property is located;

C. That the special conditions and circumstances are not the result of the actions of the applicant;

D. That the variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and district in which the property is located;

E. That the granting of the variance will not be materially detrimental to the public welfare or injurious to other land or improvements in the vicinity and district in which the property is situated;

F. That the reasons set forth in the application justify the granting of the variance, and that the variance, if granted, would be the minimum variance that would make possible the reasonable use of the land; and

G. That the granting of the variance will be in harmony with the general purpose and intent of this title and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. Within twenty-one days of the date of the public hearing, the hearing examiner shall issue its written findings, conclusions and decision setting forth the reasons for its decision to grant, amend or deny the application. A copy of said decision shall be promptly mailed to the applicant by first class mail addressed to his or her last known address.

SECTION 33. Section 18.16.030 of the Black Diamond Municipal Code is amended to read as follows:

**18.16.030 Appeals from hearing examiner decision.** The decision of the hearing examiner may be appealed by a party with standing to the King County superior court pursuant to Chapter 36.70C RCW. A petition for a judicial appeal must be filed within 21 days of the issuance of a decision.

SECTION 34. Section 18.28.010 of the Black Diamond Municipal Code is amended to read

as follows:

A conditional use or special permit may be granted by the hearing examiner, after public hearing and review, for those uses requiring such permits as provided for in this title.

SECTION 35. Section 18.28.020 of the Black Diamond Municipal Code is amended to read as follows:

A written application for a conditional or special use permit shall be submitted to the city on forms as prescribed by the city, and shall include such information as requested thereon. No application shall be accepted unless it complies with such requirements.

SECTION 36. Section 18.28.030 of the Black Diamond Municipal Code is amended to read as follows:

Before the hearing examiner may grant, amend or deny an application for a conditional or special use permit, the hearing examiner shall hold a public hearing, in accordance with Chapter 2.30 of the Black Diamond Municipal Code.

SECTION 37. Section 18.28.050 of the Black Diamond Municipal Code is amended to read as follows:

**18.28.050 Requirements and conditions imposed by hearing examiner.** In granting a conditional or special use permit, the hearing examiner shall impose all requirements for such use, as prescribed in this title and or conditions and safeguards as are necessary to secure adequate protection for the locality in which the use is to be permitted. Any violation of such conditions and/or safeguards shall be grounds for revoking the permit and punishable pursuant Section 18.04.070. The hearing examiner shall prescribe a time limit within which action for which the conditional or special use is required shall be begun or completed or both. Failure to begin and/or complete such action within the time limits set shall void the conditional or special use permit.

SECTION 38. Section 18.28.060 of the Black Diamond Municipal Code is amended to read as follows:

**18.28.060 Appeals from hearing examiner decision.** The decision of the hearing examiner may be appealed by a party with standing to the King County



superior court pursuant to Chapter 36.70C RCW. A petition for a judicial appeal must be filed within 21 days of the issuance of a decision.

SECTION 39. Section 18.32.020 of the Black Diamond Municipal Code is amended to read as follows:

An application, in completed form, shall be filed for site plan review and approval with the community development director. An application shall not be in completed form under this section if it fails to contain any of the information and material required under Section 18.32.070.

SECTION 40. Section 18.32.030 of the Black Diamond Municipal Code is amended to read as follows:

**18.32.030 Review by community development director**

A. The community development director shall have the prerogative of refusing to rule on a site plan if in the opinion of the director the site plan and related data submitted by an applicant are inadequate.

B. 1. The completed site plan review application shall be routed for review and comment to the fire chief, public works director, the health department and such other public agencies as the director may deem appropriate.

2. The director shall within forty-five working days approve, disapprove, or approve with conditions any site plan. Failure to act within the specified period shall constitute approval of the site plan and the applicant shall be entitled to apply for a building permit.

3. Any time required to develop and review an Environmental Impact Statement as required under the provisions of SEPA shall not be counted under the time constraints of this chapter.

C. 1. The director shall review a site plan and approve, or approve with conditions, if the director finds the site plan conforms to the standards, provisions, and policies of the city as expressed in its various adopted plans and ordinances.

2. Whenever the director disapproves a site plan, the director shall set forth in writing findings which shall specify the particular standards, provisions and policies to which the site plan fails to conform and the reasons why it fails to conform.

D. The decision of the director shall be final unless appealed to the hearing examiner by the applicant, aggrieved citizen, or other governmental agency, pursuant to Section 18.32.050.

SECTION 41. Section 18.32.050 of the Black Diamond Municipal Code is amended to read as follows:

**18.32.050 Appeal of decision to hearing examiner.**

A. Appeals of all site plan review decisions may be taken to the hearing examiner by any person aggrieved. Such appeals shall be filed in writing, in duplicate, with the city clerk-treasurer within fourteen days of the date of the decision being appealed.

B. The hearing examiner shall consider the matter at a public hearing in accordance with Chapter 2.30 of the Black Diamond Municipal Code.

C. The hearing examiner's decision shall be the final decision of the city. The decision may be appealed by a party with standing to the King County superior court pursuant to Chapter 36.70C RCW. A petition for a judicial appeal must be filed within 21 days of the issuance of a decision.

D. The hearing examiner shall not approve or disapprove a site plan different from that approved or disapproved by the director. The intent of this section is to insure that the hearing examiner and the director make decisions based on the same set of plans. If the hearing examiner receives a site plan different from that considered by the director, the site plan shall be referred to the director for further consideration.

SECTION 42. Section 18.32.060 of the Black Diamond Municipal Code is amended to read as follows:

Prior to applying for site plan review, a developer may file with the community development department a summary site plan, which shall contain in a rough and approximate manner all of the information required in the site plan application. The purpose of the summary site plan is to enable a developer filing the plan to obtain the advice of the department as to the applicability of the intent, standards and provisions of this chapter to the plan. After the filing of a summary site plan, the department shall make available to the developer its written advice regarding the compatibility of the preliminary site plan with the intent, standards and provisions of this chapter.

SECTION 43. Section 18.32.080 of the Black Diamond Municipal Code is amended to read as follows:

The director or hearing examiner may require the applicant to submit any additional information or material which they find is necessary for the proper review and hearing of the application.

SECTION 44. Section 18.32.090 of the Black Diamond Municipal Code is amended to read as follows:

An approved site plan may be amended by the same procedures provided under this ordinance for original site plan approval.

SECTION 45. Section 18.54.040 of the Black Diamond Municipal Code is amended to read as follows:

A. **Application.** An applicant for an accessory dwelling unit shall submit an application on a form as provided by the city's planning department, including all application fees as set forth in the city's fee schedule. At a minimum, an application for accessory dwelling unit permit shall include plans for creating the accessory dwelling unit, evidence of current ownership and a certification of owner occupancy.

B. **Certification of Owner Occupancy.** The certification of owner occupancy shall be in the form of a notarized affidavit completed by the property owner as reflected in title records affirming that they make their legal residence upon the subject lot.

C. **Review by Hearing Examiner.** Upon receipt of a complete application for an accessory dwelling unit, the planning department shall schedule a public hearing before the hearing examiner. In addition to publication and posting requirements of the city, the notice of the public hearing shall be mailed to the owners of record of all properties lying within three hundred feet of the subject property at least ten days prior to the date of the public hearing.

D. **Decisions.** The hearing examiner shall either approve, disapprove or approve with conditions an application for an accessory dwelling unit. The decision of the hearing examiner shall be the final administrative decision of the city. As a condition of approval, the applicant shall record a covenant in a form approved by the city attorney with the King County department of records and elections, providing notice to future owners for the subject lot of the existence of the accessory dwelling unit, the owner occupancy requirements of the city, any conditions imposed as a part of the approval of the accessory dwelling unit and notice of the requirements for continued use of an accessory dwelling unit as set forth in this chapter.

E. **Validity.** Any permit issued pursuant to this section shall be issued only to the property owner, and shall be valid only so long as the permit holder owns the property and continues to maintain residency at the permitted location. Such permit shall expire automatically upon any transfer of property ownership from the permit holder. If a new property owner submits a request for continued use of an accessory dwelling unit previously approved in accordance with this chapter within six months of accepting ownership of the property, the city administrator may grant

such approval administratively after review for compliance with any original conditions for approval. Any application for renewal occurring more than six months after a change in ownership shall be processed in the same manner set forth in this chapter for a new application for any accessory dwelling unit.

SECTION 46. Section 18.92.040 of the Black Diamond Municipal Code is amended to read as follows:

- A. Applications/Fees. Applications for signs shall be accompanied by:
  - 1. Two site plans showing the location of the affected lot, building(s) and sign(s), showing both existing signs;
  - 2. Two copies of a scale drawing of the proposed sign or sign revision, including size, height, copy, structural; footing details, material specifications, method of attachment, illumination, front and end views of marquees, calculation for dead load and wind pressure, photograph of site and building marked to show where sign or marquee is proposed and any other information required to ensure compliance with appropriate laws;
  - 3. Written consent of the owner of the building, structure or property where the sign is to be erected;
- B. Administrative Requirements. The city engineer shall ascertain that the sign installer has a valid Washington State contractor's license, unless the sign is being installed by the owner of the sign.
- C. Variances.
  - 1. Any person may apply to the hearing examiner for a variance from the requirements of this chapter. Before the hearing examiner may grant, amend or deny an application for a variance, the hearing examiner shall hold a duly noticed public hearing. Upon the filing of an application for a variance by a property owner or by a lessee, the hearing examiner shall immediately set a time and place for said public hearing to consider the application. A written notice thereof shall be mailed to all property owners of record within a three-hundred-foot radius of the external boundaries of the subject property. In addition, notice shall be posted on the property at least ten days prior to the hearing. Said notice shall include the time, date, place and purpose of the hearing and shall identify the subject matter property by address, written description, legal description or vicinity sketch.
  - 2. Upon completion of the public hearing, the hearing examiner shall grant, deny or amend the application in accordance with the provisions of this chapter. Before any variance can be granted, the hearing examiner shall make findings of fact setting forth and showing that the following circumstances exist:
    - a. The granting of the variance would not be materially detrimental to the property owners in the vicinity and the variance sought is of minimum sign size, height and scope to meet the conditions and needs of the

applicant; and

b. The granting of the variance would not be contrary to the objectives of this chapter; and

c. The signage of the property in question cannot be adequately met under the literal interpretation and strict application of this chapter; and

d. The granting of the variance is necessary because of special circumstances relating to property location, topography, shape and size; site distance and limited view to property; and/or dependency of business to visual access of freeway traffic in the interchange area.

3. Within twenty-one days of the date of the public hearing, the hearing examiner shall issue its written findings, conclusions and decision setting forth the reasons for its decision to grant, amend or deny the application. A copy of said decision shall be promptly mailed to the applicant by first class mail addressed to his or her last known address.

4. The decision of the hearing examiner may be appealed by a party with standing to the King County superior court pursuant to Chapter 36.70C RCW. A petition for a judicial appeal must be filed within 21 days of the issuance of a decision.

SECTION 47. Section 19.04.250(C) of the Black Diamond Municipal Code is amended to read as follows:

C. On receipt of a timely written notice of appeal, the planning director shall advise the hearing examiner of the appeal and request that a date for considering the appeal be established.


SECTION 48. Sections 18.28.040, 18.28.045, 18.32.040 and subsection 17.20.040(G) of the Black Diamond Municipal Code are hereby repealed.

SECTION 49. This Ordinance shall be in full force and effect five days after its passage, approval, posting and publication as provided by law. A summary of this Ordinance may be published in lieu of publishing the Ordinance in its entirety.

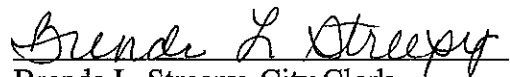
SECTION 50. If any provision of this Ordinance is determined to be invalid or unenforceable for any reason, the remaining provisions of this Ordinance shall remain in force and effect.

Introduced the 3<sup>rd</sup> day of April, 2008.

Passed by a majority of the City Council at a meeting held on the 3<sup>rd</sup> day of April, 2008.

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

Attest:

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

APPROVED AS TO FORM:

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Loren D. Combs, City Attorney

Published: 4/8/08  
Posted: 4/4/08  
Effective Date: 4/13/08