

# City Update

For weeks ending: February 14 and February 21

City Council	Mayor & City Administrator
<p><u>Position 1:</u> Deady Feb 13: attended Finance Committee mtg. Feb 19: attended Sound Cities Association networking dinner</p> <p><u>Position 2:</u> Morgan – No Report</p> <p><u>Position 3:</u> Edelman Feb 19 : attended meeting with City Administrator to discuss Council Retreat Feb 19: attended meeting with City Administrator and City Attorney re: changes to Council Rules Feb 19: attended Sound Cities Association networking dinner</p> <p><u>Position 4:</u> Benson Feb 12: attended Public Issues Committee mtg. Feb 13: attended Finance Committee mtg. Feb 18: attended South County Area Transportation mtg Feb 19: attended Maple Valley-Black Diamond Chamber of Commerce luncheon; meeting with City Administrator and City Attorney re: changes to Council Rules; attended Sound Cities Association networking dinner Feb 20: attended Public Works Committee mtg</p> <p><u>Position 5:</u> Taylor – No Report</p>	<p><u>Mayor's Activities</u> Feb. 12: attended swearing in ceremony for Officer Megan Ross. Feb. 12: attended swearing in ceremony for Officer Megan Ross. Feb. 13: attended meeting with MAKERS (consultant) Feb. 19: attended Sound Cities Association networking dinner</p> <p><u>City Administrator's Activities</u> <u>Feb. 12: lunch with Chief Smith, Mountain View Fire and Safety; attended swearing in ceremony for Officer Megan Ross</u> <u>Feb. 12: attended swearing in ceremony for Officer Megan Ross.</u> <u>Feb. 13: Attended meeting with MAKERS (consultant)</u> <u>Feb. 19: Attended Maple Valley-Black Diamond Chamber of Commerce luncheon</u></p>

## Council Commissions, Boards & Committees

- Budget, Finance and Administration Committee. Meeting date: Next meeting: February 27, 2014. Meeting time: 10:00 AM. Staff support: May Miller. Meets twice a month, on Thursdays, a week before Council meetings at 10:00 AM)
- Planning and Community Service Committee. No meeting. (Meets the first Wednesday of the month.). Staff support: Stacey Welsh.
- Cemetery and Parks Committee. Meeting date: February 20, 2014. Meeting time: 10:00 AM. Staff support: Aaron Nix.(Meets the third Thursday of the month.)
- Cemetery Board. Meeting date: February 20, 2014. Meeting Time: 3:30 PM. Staff support: Aaron Nix and Seth Boettcher. (Meets quarterly.)
- Public Works Committee. Meeting date: March 7\_, 2014. Meeting time: Noon to 1:00 PM \_. Staff support: Seth Boettcher.
- Public Safety Committee. No meeting. . Staff support: Chief Kiblinger. (Meets the second Friday of every month.)

## Community Development Activities

- Performed 8 inspections
- Received applications for: 1 plumbing permit, 2 right-of-way permits, 1 new single family permit, 1 tree removal permit, 1 mechanical permit, and 1 SEPA Checklist (Abrams Road Project)
- Issued 1 plumbing permit,
- Completed 3 permit reviews
- Issued annual Invitation to submit request for Comprehensive Plan amendments for 2014.( Further information is available at Community Development or on the City website.)

### Planning Commission:

- Meeting held February 11, 2014.

	2014	2013
Pre-application Conferences Held	0	7
Preliminary Plats Approved	0	0
(Number of Residential Lots)	-	-
Multi-family units approved	0	0
New Single Family Residential Permits Issued	0	8
New Commercial Square Footage Approved	0	0
Tenant Improvement Permits Issued	0	3
Sign Permits Issued	0	2
Public Hearings Held	0	1

## Status of Active Capital Improvement Projects

**Springs Project:** Reviewed draft of the Springs Alternatives Analysis, returned comments and questions for editing. Next steps are to review the report with the WSFFA partners and the PW Committee.

**Old Lawson Pump Station:** Pump and equipment package has been delivered and the electrical contract is being routed for signatures. City crew will begin work in early March.

**Abrams Guard Rail:** The design and bid documents are 90%. The State Environmental Protection Act checklist was submitted 2/12/14. The timing of the project will be discussed further at the Public Works Committee of the Council.

**½ Mil Tank Painting:** Council approved a contract with RH2 on February 6<sup>th</sup>, 2014.

**Old Sewer Lagoon Decommissioning:** Staff to develop a site reclamation plan in-house and submit to the Department of Ecology by the end of March.

**Reflective Sign Installation:** Installation at 95%. Punch list complete.

**Downtown Water Main Project:** Grant received. Next step is to collect and submit project data to King County Community Development.

**Roberts Drive Reconstruction at Rock Creek Bridge:** General information discussed at 2/10/14 Public Works committee meeting. Contract negotiations in progress with Parametrix.

**Lawson Street Sidewalk Project:** A proposed design contract with Parametrix will be presented to Council on February 6th.

**SR 169 / North Commercial Storm Pond (D2):** Contract with Parametrix approved by Council on February 6th, 2014. Contract execution in process. Separate contract to be executed for City trail project, whose boundaries overlap with this project (Ginder Creek trail project).

**Morganville Sewer Pump Station Reconstruction:** New pumps are on order.

**Water System Maintenance:** Staff repaired electrical problems with the chlorine system.

**Janitorial Services:** The Public Works staff is preparing bid documents to solicit bids for janitorial services for City Hall, Public Works, Community Development, the Police and Council Chambers.

**Ginder Creek Trail (P2):** A contract will be proposed for wetland flagging and functional assessment study. The ordinary high water mark for Ginder Creek will also be established and flagged. A scope of work for these services has been written and sent to three (3) qualified firms for a response by March 7th. The contract is expected to be under \$7,500.

## General Administrative Activities

- Pet licenses issued: 2; 9year-to-date; website updates 10;52 year-to-date; passports processed 45; 145year-to-date. Business licenses issued: 23; 305 year-to-date.
- Received submittals from five law firms (four already received in December, 2013) for city attorney services; a total of nine responses were received.
- Other: Anti-harassment training for city staff has been scheduled for March 4, and March 18, through Cities Insurance Association of Washington.

## Events on the Horizon

- See City calendar at <http://www.ci.blackdiamond.wa.us/calendar.html>
- See Maple Valley Black Diamond Chamber of Commerce calendar at <http://www.maplevalleychamber.org/schedule/calendar/maple-valley-featured-events>
- See Black Diamond Historical Society calendar at <http://www.blackdiamondmuseum.org/calendar.htm>
- See Black Diamond Community Center calendar at <http://www.blackdiamondcc.org/community/community.html>

## Adopted Council 2014 Priorities

W2 – Reservoir Painting & Maintenance  
10-year plan for asbestos pipe replacement  
D2 – North Commercial & State Route 169 Stormwater Pond Design  
P2 – Ginder Creek Trail Restoration  
F1 & F2 – Fire Engine Replacement  
T6 – Rock Creek Bridge  
L3 – Police Radio Replacement



# AMENDED AGENDA

CITY OF BLACK DIAMOND  
March 6, 2014 Meeting Agenda - Amended  
25510 Lawson St., Black Diamond, Washington

**7:00 P.M. – CALL TO ORDER, FLAG SALUTE, ROLL CALL**

**PRESENTATION: By BergerAbam regarding 2015 Comprehensive Plan Update (see agenda item 7)**

**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.

## **PUBLIC HEARINGS:**

- 1) **AB14-027** – Regarding Extending Moratorium Prohibiting the Establishment, Location, Operation, Licensing, Maintenance, or Continuation of any Medical Cannabis Collective Garden or any Medical Marijuana Dispensary Ms. Welsh
- 2) **AB14-028** – Regarding Extending Moratorium Prohibiting 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 Ms. Welsh

## **UNFINISHED BUSINESS:**

- 3) **AB14-025A** – Resolution Confirming the Mayor’s Appointments to the Planning Commission Mayor Gordon

## **NEW BUSINESS:**

- 4) **AB14-029** - Resolution to appoint Carol Morris as City Attorney and City Council confirmation of appointment Mayor Gordon
- 5) **AB14-030** - Resolution authorizing the Mayor to execute a professional services agreement with Morris Law, P.C Mayor Gordon
- 6) **AB14-031** – Consideration of Resolution Adopting General Government Facilities Mitigation Fee Plan Ms. Todd
- 7) **AB14-032** – Resolution Authorizing Contract with BergerABAM for 2015 Comprehensive Plan Update Ms. Todd
- 8) **AB14-033** – Ordinance Amending BDMC Regarding Regular Work Session for Second Thursday of the Month Ms. Todd
- 12) **AB14-034** – Resolution Opposing a Ballot Measure by King County to Assess a \$60- Vehicle Tab Fee and a 0.1% Sales and Use Tax on King County Residents Ms. Todd

**DEPARTMENT REPORTS:**

**Administration:**

- A. Council retreat planning
- B. July 3, 2014 Council meeting
- C. Implementing one or more annual Council recess
- D. Update: the Reserve at Woodlands

**MAYOR'S REPORT:**

**COUNCIL REPORTS:**

- A. Council Standing Committees
  - Budget, Finance, Administration Committee – Councilmember Benson, Chair
  - Planning and Community Service Committee – Councilmember Edelman, Chair
  - Public Safety Committee – Councilmember Taylor, Chair
  - Cemetery and Parks Committee – Councilmember Deady, Chair
  - Public Works Committee – Councilmember Taylor, Chair
- B. Regional Committees
  - Public Issues Committee (PIC) – Councilmember Edelman
  - Growth Management Planning Council (GMPC) – Councilmember Deady
  - Water Resource Inventory Area Committee (WRIA 9) – Councilmember Morgan
  - South County Area Transportation Board (SCATBd) – Councilmember Benson
  - South East Area Transportation Solutions (SEATS) Coalition – Councilmember Benson
  - Mental Illness and Drug Dependency Oversight Committee – Councilmember Benson

**ATTORNEY REPORT:**

**PUBLIC COMMENTS:**

**CONSENT AGENDA:**

**9) Claim Checks** – March 6, 2014, No. 40640 through No. 40687 (voids 40558; 40642; 40645-40650) in the amount of \$84,933.56

**10) Payroll Checks** – January 31, 2014 No.18235 through No. 18263 and ACH Pay in the amount of \$355,636.28

**11) Minutes** – Special Council Meeting of January 9, 2014, Town Hall Meetings of January 9, 2014 and February 13, 2014 and Council Meeting of February 20, 2014

**EXECUTIVE SESSION:**

**ADJOURNMENT:**

**DEPARTMENT REPORTS:**

**Administration:**

- A. Council retreat planning
- B. July 3, 2014 Council meeting
- C. Implementing one or more annual Council recess
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**EXECUTIVE SESSION:**

**ADJOURNMENT:**

# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
<b>SUBJECT:</b> <b>PUBLIC HEARING –</b> <b>AB14-027,</b> <b>Imposing a moratorium upon collective</b> <b>gardens and dispensaries</b>	<b>Agenda Date: March 6, 2014</b>	
	<b>AB14-027</b>	
	Mayor Dave Gordon	
	City Administrator Christy Todd	
	City Attorney P. Stephen DiJulio	<b>X</b>
	City Clerk – Brenda L. Martinez	
	Community Development – Stacey Welsh	<b>X</b>
	Finance – May Miller	
	Economic Development – Andy Williamson	
	Parks/Natural Resources – Aaron Nix	
Cost Impact (see also Fiscal Note): N/A	Police – Chief Kiblinger	
Fund Source: N/A	Public Works – Seth Boettcher	
Timeline:	Court Administrator – Stephanie Metcalf	
<b>Agenda Placement:</b> <input type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input checked="" type="checkbox"/> City Administrator		
<b>Attachments: Public Hearing Notice, Ordinance No. 13-1011, Attorney General Opinion, RCW 35A.63.220</b>		
<p><b>SUMMARY STATEMENT:</b></p> <p>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. The Council can consider extending the moratorium for one year with a work plan, as required by law to enact a one-year moratorium.</p> <p>The City requires 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. Initiative Measure No. 502, establishing a regulatory framework for recreational marijuana, provides no guidance for the regulation of medical cannabis.</p> <p>Medical cannabis is largely a cash business, which increases the potential risk for crime. During the one-year moratorium, staff must consider public health and safety issues, especially in light of the February 17, 2014 shooting in Renton where a cannabis supplier killed a medical cannabis dispensary operator. On February 14, 2014, a medical cannabis vendor was robbed at gunpoint when meeting with a potential client. There have been numerous other 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 State Legislature is currently considering bills that would allow cities to share in the revenues from Initiative 502 regarding recreational marijuana retail sales, in addition to the manufacture (growing) of marijuana.</p>		

In addition, and without limitation, staff should also analyze the impacts of allowing medical 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 purpose of the public hearing is to consider an extension of the moratorium prohibiting the establishment, location, operation, licensing, maintenance, or continuation of any medical cannabis collective garden or any medical marijuana dispensary. The extension proposed by City staff is for one year, with a work plan. The work plan, to be developed and presented on March 20, 2014, will allow City staff, the Planning Commission, and the City Council the necessary time to consider changes to State law from the 2014 legislative session, and to move any proposed zoning and development code changes through established governmental processes. This moratorium is authorized pursuant to RCW 35A.63.220 and RCW 36.70A.390.

FISCAL NOTE (Finance Department):  
None

COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: n/a

**RECOMMENDED ACTION: Conduct the public hearing relating to a one year moratorium, with a work plan within the City of Black Diamond upon the establishment, location, operation, licensing, maintenance or continuation of medical cannabis collective gardens or dispensaries.**

**Following the public hearing, the Council will consider the moratorium and direct staff accordingly.**

**RECORD OF COUNCIL ACTION**

<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
March 6, 2014		

Please publish in the next two (2) consecutive editions of the Voice of the Valley

**CITY OF BLACK DIAMOND  
NOTICE OF (2) PUBLIC HEARINGS**

Notice is hereby given that the Black Diamond City Council will be conducting two public hearings on Ordinance Nos. 13-1011 and 13-1012 (October 3, 2013): 1) regarding a proposed ordinance to extend a moratorium prohibiting the establishment, location, operation, licensing, maintenance, or continuation of any medical cannabis collective garden or any medical marijuana dispensary; and, 2) regarding a proposed ordinance to extend a moratorium prohibiting the acceptance or processing of applications, or issuance of permits and approvals, and uses or activities associated with production, processing, and retailing of cannabis (marijuana) and marijuana-infused products. The hearings are scheduled for Thursday, March 6, 2014 at 7:00 p.m. at the Black Diamond City Council Chambers, 25510 Lawson Street, Black Diamond, WA. The purpose of the hearing is to hear public testimony on the proposed moratoriums. Written comments may be submitted to the Clerk's office at 24301 Roberts Drive, PO Box 599, Black Diamond, WA, 98010 no later than 5:00 p.m. on March 6, 2014; otherwise, comments must be submitted at the hearings. Information is also available on the City's website [www.ci.blackdiamond.wa.us](http://www.ci.blackdiamond.wa.us) under "Public Notices." For further information please contact Stacey Welsh, Community Development Director at 360-886-5700.

Dated this 21st day of February, 2014  
Brenda L. Martinez, CMC  
City Clerk

# CITY OF BLACK DIAMOND

## WASHINGTON

ORDINANCE NO. 13-1011

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**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, RELATING TO A MORATORIUM; ADOPTING FINDINGS OF FACT AND A SIX-MONTH MORATORIUM WITHIN THE CITY OF BLACK DIAMOND UPON THE ESTABLISHMENT, LOCATION, OPERATION, LICENSING, MAINTENANCE OR CONTINUATION OF MEDICAL CANNABIS COLLECTIVE GARDENS OR DISPENSARIES, ASSERTED TO BE AUTHORIZED OR ACTUALLY AUTHORIZED UNDER E2SSB 5073, CHAPTER 181, LAWS OF 2011, CHAPTER 69.51A REVISED CODE OF WASHINGTON, OR ANY OTHER LAWS OF THE STATE OF WASHINGTON; ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING FOR SEVERABILITY.**

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**WHEREAS**, the possession or distribution of cannabis (marijuana) has been and continues to be a violation of federal law, through the Controlled Substances Act (“CSA”); and

**WHEREAS**, initiative Measure No. 692, approved by the voters of Washington State on November 30, 1998, and now codified as Chapter 69.51A RCW, created a limited defense to marijuana charges under state, not federal, law if the person charged could demonstrate that he or she was a qualifying patient or designated provider as those terms are defined in Ch. 69.51A RCW; and

**WHEREAS**, in 2007, the state legislature amended the law, and again in 2011, the state legislature passed a third amendment to the law, E2SSB 5073, Chapter 181, Laws of 2011, portions of which the Governor vetoed. The newly amended law took effect on July 22, 2011; and

**WHEREAS**, prior to issuing her partial veto, the Governor received a letter signed by Washington’s two U.S. Attorneys, Michael Ormsby and Jennifer Durkan. In their letter, they wrote that marijuana is a Schedule I controlled substance under federal law and, as such, “growing, distributing and possessing marijuana in any capacity, other than as part of a federally authorized research program, is a violation of federal law regardless of state laws permitting such activities”, and, concluded that “state employees who conducted activities mandated by the Washington legislative proposals would not be immune from liability under the CSA”; and

**WHEREAS**, because the Governor vetoed 36 of the 58 sections of the Legislature's bill amending Chapter 69.51A RCW, the law, in its final form, understandably has inconsistencies and ambiguities. For example, certain sections that were not vetoed make reference to other sections that were vetoed; and

**WHEREAS**, the amendments to Chapter 69.51A RCW changed the scope and effect of the law. New sections affect the rights of qualifying patients and their designated providers. The law now allows "collective gardens" that provide for growing and cultivating up to 45 plants to serve no more than 10 qualifying patients. The law also provides other changes to the rights and responsibilities of medical marijuana patients and their designated providers; and

**WHEREAS**, the new law, however, clearly delegates to cities the authority to implement zoning requirements, business licensing requirements, health and safety requirements, and business taxes as those requirements and taxes relate to the production, processing, or dispensing of medical marijuana. In particular, local regulations could address ambiguities concerning the location and operation of collective gardens, and ensure that provisions related to designated providers are not used to establish a de facto dispensary when the authority for such uses was vetoed; and

**WHEREAS**, the City Council requires time to conduct appropriate research to understand the extent of the changes provided in the new law, to analyze impacts and potential liabilities under federal law, and to determine an appropriate regulatory framework for any new uses that are allowed under these laws; and

**WHEREAS**, the City must ensure that proposed locations for these operations are appropriate and that any potential secondary impacts arising from the operation of these uses or facilities are minimized and mitigated. These secondary impacts may include, but are not limited to, burglaries associated with the cash and marijuana maintained on the site, or an increase of other illegal activities, such as drug use, within the vicinity of these dispensaries; and

**WHEREAS**, in particular, and without limitation, staff should analyze the impacts of allowing these uses and facilities in residential 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; and

**WHEREAS**, pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City Council held a public hearing on the 19th day of September, 2013, and took and considered public testimony regarding whether or not the City should establish and implement a moratorium upon the zoning, licensing, and permitting of medical marijuana dispensaries and collective gardens; and,

**WHEREAS**, after having considered the public testimony and based upon the foregoing, the city council finds that a zoning, licensing, and permitting moratorium should be established, pending local review of appropriate locations and design requirements of these operations, and impacts of the newly amended law and its interaction with federal law; and

**WHEREAS**, although the City Council determines that a moratorium is necessary for the reasons established above, the City Council emphasizes that it understands the needs of persons suffering from debilitating or terminal conditions, as well as the benefits that approved medical use of marijuana may provide these persons. Nevertheless, given the complex legal and regulatory framework surrounding this issue, a moratorium remains necessary until the City Council can adequately address the competing interests at play;

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

**Section 1. Findings.** The recitals and findings set forth above are hereby adopted as the City Council's findings in support of the moratorium imposed by this ordinance.

**Section 2. – Moratorium Imposed.** Pursuant to the provisions of Article 11, Section 11 of the Washington State Constitution, RCW 35A.63.220, and RCW 36.70A.390, a moratorium is hereby enacted prohibiting within the City of Black Diamond the establishment, location, operation, licensing, maintenance, or continuation of any medical cannabis collective garden or any medical marijuana dispensary, whether for profit or not for profit, asserted to be authorized or actually authorized under E2SSB 5073, Chapter 181, Laws of 2011, Chapter 69.51A RCW, or any other laws of the state of Washington. No building permit, occupancy permit, or other development permit or approval shall be issued for any of the purposes or activities listed above, and no business license shall be granted or accepted while this moratorium is in effect. Any land use permits, business licenses or other permits for any of these operations that are issued as a result of error or by use of vague or deceptive descriptions during the moratorium are null and void, and without legal force or effect. As used in this ordinance, medical marijuana dispensary and medical marijuana collective garden shall be defined as provided for in Chapter 69.51A RCW as currently enacted or thereafter amended. The moratorium imposed hereunder shall constitute a regulation within the meaning of Section 8.02.020 of the Black Diamond Municipal Code.

**Section 3. – No Nonconforming Uses.** No use that constitutes or purports to be a medical marijuana dispensary or medical marijuana collective garden as those terms are defined in this ordinance, that was engaged in that activity prior to the enactment of this ordinance shall be deemed to have been a legally established use under the provisions of the Black Diamond Municipal Code and that use shall not be entitled to claim legal nonconforming status.

**Section 4. – Effective Period for Moratorium.** The moratorium set forth in this ordinance shall be in effect for a period of six months from the date this ordinance is passed and shall automatically expire at the conclusion of that six-month period unless the same is extended as provided in RCW 35A.63.220 and RCW 36.70A.390, or unless terminated sooner by the city council.

**Section 5. – Referral to Staff.** The City Administrator and/or his/her designee is hereby authorized and directed to develop appropriate land use regulations for review by the Planning Commission and recommendation to the City Council for inclusion in the zoning regulations or other provisions of the Black Diamond Municipal Code. The City Administrator and/or his/her

designee is hereby authorized and directed to develop appropriate business licensing and other regulations pursuant to the newly amended law for review and recommendation for inclusion in the zoning regulations or other provisions of the Black Diamond Municipal Code.

**Section 6. – Severability.** If any one or more section, subsection, or sentence of this ordinance is held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

**Section 7. – Corrections by City Clerk or Code Reviser.** Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

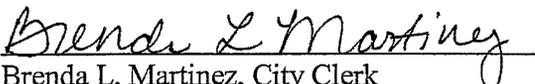
**Section 8. – Effective Date.** This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication. The City Clerk is directed to publish a summary of this ordinance at the earliest possible publication date.

**ADOPTED BY THE CITY COUNCIL OF BLACK DIAMOND,  
WASHINGTON THIS 3RD DAY OF OCTOBER, 2013.**

APPROVED:

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

ATTEST/AUTHENTICATED:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Chris Bacha  
Kenyon Disend, PLLC  
City Attorney

Filed with the City Clerk: October 4, 2013  
Passed by the City Council: October 3, 2013

Ordinance No. 13-1011  
Date of Publication: October 11, 2013  
Effective Date: October 16, 2013



**STATUTES—INITIATIVE AND REFERENDUM—ORDINANCES—  
COUNTIES—CITIES AND TOWNS—PREEMPTION—POLICE POWERS—  
Whether Statewide Initiative Establishing System For Licensing  
Marijuana Producers, Processors, And Retailers Preempts Local  
Ordinances**

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1. Initiative 502, which establishes a licensing and regulatory system for marijuana producers, processors, and retailers, does not preempt counties, cities, and towns from banning such businesses within their jurisdictions.
2. Local ordinances that do not expressly ban state-licensed marijuana licensees from operating within the jurisdiction but make such operation impractical are valid if they properly exercise the local jurisdiction's police power.

January 16, 2014

The Honorable Sharon Foster  
Chair, Washington State Liquor Control Board  
3000 Pacific Avenue SE  
Olympia, WA 98504-3076

Cite As:  
AGO 2014 No. 2

Dear Chair Foster:

By letter previously acknowledged, you have requested our opinion on the following paraphrased questions:

1. **Are local governments preempted by state law from banning the location of a Washington State Liquor Control Board licensed marijuana producer, processor, or retailer within their jurisdiction?**
2. **May a local government establish land use regulations (in excess of the Initiative 502 buffer and other Liquor Control Board requirements) or business license requirements in a fashion that makes it impractical for a licensed marijuana business to locate within their jurisdiction?**

**BRIEF  
ANSWERS**

1. No. Under Washington law, there is a strong presumption against finding that state law preempts local ordinances. Although Initiative 502 (I-502) establishes a licensing and regulatory system for marijuana producers, processors, and retailers in Washington State, it includes no clear indication that it was intended to preempt local authority to regulate such

*[original page 2]*

businesses. We therefore conclude that I-502 left in place the normal powers of local governments to regulate within their jurisdictions.

2. Yes. Local governments have broad authority to regulate within their jurisdictions, and nothing in I-502 limits that authority with respect to licensed marijuana businesses.

## BACKGROUND

I-502 was approved by Washington voters on November 6, 2012, became effective 30 days thereafter, and is codified in RCW 69.50. It decriminalized under state law the possession of limited amounts of useable marijuana<sup>[1]</sup> and marijuana-infused products by persons twenty-one years or older. It also decriminalized under state law the production, delivery, distribution, and sale of marijuana, so long as such activities are conducted in accordance with the initiative's provisions and implementing regulations. It amended the implied consent laws to specify that anyone operating a motor vehicle is deemed to have consented to testing for the active chemical in marijuana, and amended the driving under the influence laws to make it a criminal offense to operate a motor vehicle under the influence of certain levels of marijuana.

I-502 also established a detailed licensing program for three categories of marijuana businesses: production, processing, and retail sales. The marijuana producer's license governs the production of marijuana for sale at wholesale to marijuana processors and other marijuana producers. RCW 69.50.325(1). The marijuana processor's license governs the processing, packaging, and labeling of useable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers. RCW 69.50.325(2). The marijuana retailer's license governs the sale of useable marijuana and marijuana-infused products in retail stores. RCW 69.50.325(3).

Applicants for producer, processor, and retail sales licenses must identify the location of the proposed business. RCW 69.50.325(1), (2), (3). This helps ensure compliance with the requirement that "no license may be issued authorizing a marijuana business within one thousand 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." RCW 69.50.331(8).

Upon receipt of an application for a producer, processor, or retail sales license, the Liquor Control Board must give notice of the application to the appropriate local jurisdiction. RCW 69.50.331(7)(a) (requiring notice to the chief executive officer of the incorporated city or town if the application is for a license within an incorporated city or town, or the county legislative authority if the application is for a license outside the boundaries of incorporated

*[original page 3]*

cities or towns). The local jurisdiction may file written objections with respect to the applicant or the premises for which the new or renewed license is sought. RCW 69.50.331(7)(b).

The local jurisdictions' written objections must include a statement of all facts upon which the objections are based, and may include a request for a hearing, which the Liquor Control Board may grant at its discretion. RCW 69.50.331(7)(c). The Board must give "substantial weight" to a local jurisdiction's objections based upon chronic illegal activity associated with the applicant's operation of the premises proposed to be licensed, the applicant's operation of any other licensed premises, or the conduct of the applicant's patrons inside or outside the licensed premises. RCW 69.50.331(9). Chronic illegal activity is defined as a pervasive pattern of activity that threatens the public health, safety, and welfare, or an unreasonably high number of citations for driving under the influence associated with the applicant's or licensee's operation of any licensed premises. RCW 69.50.331(9).[2]

In addition to the licensing provisions in statute, I-502 directed the Board to adopt rules establishing the procedures and criteria necessary to supplement the licensing and regulatory system. This includes determining the maximum number of retail outlets that may be licensed in each county, taking into consideration population distribution, security and safety issues, and the provision of adequate access to licensed sources of useable marijuana and marijuana-infused products to discourage purchases from the illegal market. RCW 69.50.345(2). The Board has done so, capping the number of retail licenses in the least populated counties of Columbia County, Ferry County, and Wahkiakum County at one and the number in the most populated county of King County at 61, with a broad range in between. *See* WAC 314-55-081.

The Board also adopted rules establishing various requirements mandated or authorized by I-502 for locating and operating marijuana businesses on licensed premises, including minimum residency requirements, age restrictions, and background checks for licensees and employees; signage and advertising limitations; requirements for insurance, recordkeeping, reporting, and taxes; and detailed operating plans for security, traceability, employee qualifications and training, and destruction of waste. *See generally* WAC 314-55.

Additional requirements apply for each license category. Producers must describe plans for transporting products, growing operations, and testing procedures and protocols. WAC 314-55-020(9). Processors must describe plans for transporting products, processing operations, testing procedures and protocols, and packaging and labeling. WAC 314-55-020(9). Finally, retailers must also describe which products will be sold and how they will be displayed, and may only operate between 8 a.m. and 12 midnight. WAC 314-55-020(9), -147.

The rules also make clear that receipt of a license from the Liquor Control Board does not entitle the licensee to locate or operate a marijuana processing, producing, or retail business in violation of local rules or without any necessary approval from local jurisdictions. WAC 314-

*[original page 4]*

-55-020(11) provides as follows: "The issuance or approval of a license shall not be construed as a license for, or an approval of, any violations of local rules or ordinances

including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements.

## ANALYSIS

Your question acknowledges that local governments have jurisdiction over land use issues like zoning and may exercise the option to issue business licenses. This authority comes from article XI, section 11 of the Washington Constitution, which provides that “[a]ny county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.” The limitation on this broad local authority requiring that such regulations not be “in conflict with general laws” means that state law can preempt local regulations and render them unconstitutional either by occupying the field of regulation, leaving no room for concurrent local jurisdiction, or by creating a conflict such that state and local laws cannot be harmonized. *Lawson v. City of Pasco*, 168 Wn.2d 675, 679, 230 P.3d 1038 (2010).

Local ordinances are entitled to a presumption of constitutionality. *State v. Kirwin*, 165 Wn.2d 818, 825, 203 P.3d 1044 (2009). Challengers to a local ordinance bear a heavy burden of proving it unconstitutional. *Id.* “Every presumption will be in favor of constitutionality.” *HJS Dev., Inc. v. Pierce County ex rel. Dep’t of Planning & Land Servs.*, 148 Wn.2d 451, 477, 61 P.3d 1141 (2003) (internal quotation marks omitted).

### A. Field Preemption

Field preemption arises when a state regulatory system occupies the entire field of regulation on a particular issue, leaving no room for local regulation. *Lawson*, 168 Wn.2d at 679. Field preemption may be expressly stated or may be implicit in the purposes or facts and circumstances of the state regulatory system. *Id.*

I-502 does not express any indication that the state licensing and operating system preempts the field of marijuana regulation. Although I-502 was structured as a series of amendments to the controlled substances act, which does contain a preemption section, that section makes clear that state law “fully occupies and preempts the entire field of *setting penalties* for violations of the controlled substances act.” RCW 69.50.608 (emphasis added).[3] It also allows “[c]ities, towns, and counties or other municipalities [to] enact only those laws and

*[original page 5]*

ordinances relating to controlled substances that are consistent with this chapter.” RCW 69.50.608. Nothing in this language expresses an intent to preempt the entire field of regulating businesses licensed under I-502.

With respect to implied field preemption, the “legislative intent” of an initiative is derived from the collective intent of the people and can be ascertained by material in the official voter’s pamphlet. *Dep’t of Revenue v. Hoppe*, 82 Wn.2d 549, 552, 512 P.2d 1094 (1973); see also *Roe v. TeleTech Customer Care Mgmt., LLC*, 171 Wn.2d 736, 752-53, 257 P.3d 586 (2011). Nothing in the official voter’s pamphlet evidences a collective intent for the state regulatory system to preempt the entire field of marijuana business licensing or operation. Voters’ Pamphlet 23-30 (2012). Moreover, both your letter and the Liquor Control Board’s rules recognize the authority of local jurisdictions to impose regulations on state licensees. These facts, in

addition to the absence of express intent suggesting otherwise, make clear that I-502 and its implementing regulations do not occupy the entire field of marijuana business regulation.

### **B. Conflict Preemption**

Conflict preemption arises “when an ordinance permits what state law forbids or forbids what state law permits.” *Lawson*, 168 Wn.2d at 682. An ordinance is constitutionally invalid if it directly and irreconcilably conflicts with the statute such that the two cannot be harmonized. *Id.*; *Weden v. San Juan County*, 135 Wn.2d 678, 693, 958 P.2d 273 (1998). Because “[e]very presumption will be in favor of constitutionality,” courts make every effort to reconcile state and local law if possible. HJS Dev., 148 Wn.2d at 477 (internal quotation marks omitted). We adopt this same deference to local jurisdictions.

An ordinance banning a particular activity directly and irreconcilably conflicts with state law when state law specifically entitles one to engage in that same activity in circumstances outlawed by the local ordinance. For example, in *Entertainment Industry Coalition v. Tacoma-Pierce County Health Department*, 153 Wn.2d 657, 661-63, 105 P.3d 985 (2005), the state law in effect at the time banned smoking in public places except in designated smoking areas, and specifically authorized owners of certain businesses to designate smoking areas. The state law provided, in relevant part: “A smoking area may be designated in a public place by the owner . . . .” Former RCW 70.160.040(1) (2004), *repealed by* Laws of 2006, ch. 2, § 7(2) (Initiative Measure 901). The Tacoma-Pierce County Health Department ordinance at issue banned smoking in all public places. The Washington Supreme Court struck down the ordinance as directly and irreconcilably conflicting with state law because it prohibited what the state law authorized: the business owner’s choice whether to authorize a smoking area.

Similarly, in *Parkland Light & Water Co. v. Tacoma-Pierce County Board of Health*, 151 Wn.2d 428, 90 P.3d 37 (2004), the Washington Supreme Court invalidated a Tacoma-Pierce County Health Department ordinance requiring fluoridated water. The state law at issue authorized the water districts to decide whether to fluoridate, saying: “A water district by a

*[original page 6]*

majority vote of its board of commissioners may fluoridate the water supply system of the water district.” RCW 57.08.012. The Court interpreted this provision as giving water districts the ability to regulate the content and supply of their water systems. *Parkland Light & Water Co.*, 151 Wn.2d at 433. The local health department’s attempt to require fluoridation conflicted with the state law expressly giving that choice to the water districts. As they could not be reconciled, the Court struck down the ordinance as unconstitutional under conflict preemption analysis.

By contrast, Washington courts have consistently upheld local ordinances banning an activity when state law regulates the activity but does not grant an unfettered right or entitlement to engage in that activity. In *Weden v. San Juan County*, the Court upheld the constitutionality of the County’s prohibition on motorized personal watercraft in all marine waters and one lake in San Juan County. The state laws at issue created registration and safety requirements for vessels and prohibited operation of unregistered vessels. The Court rejected the argument that state

regulation of vessels constituted permission to operate vessels anywhere in the state, saying, “[n]owhere in the language of the statute can it be suggested that the statute creates an unabridged right to operate [personal watercraft] in all waters throughout the state.” *Weden*, 135 Wn.2d at 695. The Court further explained that “[r]egistration of a vessel is nothing more than a precondition to operating a boat.” *Id.* “No unconditional right is granted by obtaining such registration.” *Id.* Recognizing that statutes often impose preconditions without granting unrestricted permission to participate in an activity, the Court also noted the following examples: “[p]urchasing a hunting license is a precondition to hunting, but the license certainly does not allow hunting of endangered species or hunting inside the Seattle city limits,” and “[r]eaching the age of 16 is a precondition to driving a car, but reaching 16 does not create an unrestricted right to drive a car however and wherever one desires.” *Id.* at 695 (internal citation omitted).

Relevant here, the dissent in *Weden* argued: “Where a state statute licenses a particular activity, counties may enact reasonable regulations of the licensed activity within their borders but they may not prohibit same outright[,]” and that an ordinance banning the activity “renders the state permit a license to do nothing at all.” *Weden*, 135 Wn.2d at 720, 722 (Sanders, J., dissenting). The majority rejected this approach, characterizing the state law as creating not an unabridged right to operate personal watercraft in the state, but rather a registration requirement that amounted only to a precondition to operating a boat in the state.

In *State ex rel. Schillberg v. Everett District Justice Court*, 92 Wn.2d 106, 594 P.2d 448 (1979), the Washington Supreme Court similarly upheld a local ban on internal combustion motors on certain lakes. The Court explained: “A statute will not be construed as taking away the power of a municipality to legislate unless this intent is clearly and expressly stated.” *Id.* at 108. The Court found no conflict because nothing in the state laws requiring safe operation of vessels either expressly or impliedly provided that vessels would be allowed on all waters of the state.

*[original page 7]*

The Washington Supreme Court also rejected a conflict preemption challenge to the City of Pasco’s ordinance prohibiting placement of recreational vehicles within mobile home parks. *Lawson*, 168 Wn.2d at 683-84. Although state law regulated rights and duties arising from mobile home tenancies and recognized that such tenancies may include recreational vehicles, the Court reasoned “[t]he statute does not forbid recreational vehicles from being placed in the lots, nor does it create a right enabling their placement.” *Id.* at 683. The state law simply regulated recreational vehicle tenancies, where such tenancies exist, but did not prevent municipalities from deciding whether or not to allow them. *Id.* at 684.

Accordingly, the question whether “an ordinance . . . forbids what state law permits” is more complex than it initially appears. *Lawson*, 168 Wn.2d at 682. The question is not whether state law permits an activity in some places or in some general sense; even “[t]he fact that an activity may be licensed under state law does not lead to the conclusion that it must be permitted under local law.” *Rabon v. City of Seattle*, 135 Wn.2d 278, 292, 957 P.2d 621 (1998) (finding no preemption where state law authorized licensing of “dangerous dogs” while city ordinance forbade ownership of “vicious animals”). Rather, a challenger must meet the heavy burden of proving that state law creates an entitlement to engage in an activity in circumstances outlawed by the local ordinance. For example, the state laws authorizing business

owners to designate smoking areas and water districts to decide whether to fluoridate their water systems amounted to statewide entitlements that local jurisdictions could not take away. But the state laws requiring that vessels be registered and operated safely and regulating recreational vehicles in mobile home tenancies simply contemplated that those activities would occur in some places and established preconditions; they did not, however, override the local jurisdictions' decisions to prohibit such activities.

Here, I-502 authorizes the Liquor Control Board to issue licenses for marijuana producers, processors, and retailers. Whether these licenses amount to an entitlement to engage in such businesses regardless of local law or constitute regulatory preconditions to engaging in such businesses is the key question, and requires a close examination of the statutory language.

RCW 69.50.325 provides, in relevant part:

(1) There shall be a marijuana producer's license to produce marijuana for sale at wholesale to marijuana processors and other marijuana producers, regulated by the state liquor control board and subject to annual renewal. . . .

(2) There shall be a marijuana processor's license to process, package, and label useable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers, regulated by the state liquor control board and subject to annual renewal. . . .

*[original page 8]*

(3) There shall be a marijuana retailer's license to sell useable marijuana and marijuana-infused products at retail in retail outlets, regulated by the state liquor control board and subject to annual renewal. . . .

RCW 69.50.325(1)-(3). Each of these subsections also includes language providing that activities related to such licenses are not criminal or civil offenses under Washington state law, provided they comply with I-502 and the Board's rules, and that the licenses shall be issued in the name of the applicant and shall specify the location at which the applicant intends to operate. They also establish fees for issuance and renewal and clarify that a separate license is required for each location at which the applicant intends to operate. RCW 69.50.325.

While these provisions clearly authorize the Board to issue licenses for marijuana producers, processors, and retail sales, they lack the definitive sort of language that would be necessary to meet the heavy burden of showing state preemption. They simply state that there "shall be a . . . license" and that engaging in such activities with a license "shall not be a criminal or civil offense under Washington state law." RCW 69.50.325(1). Decriminalizing such activities under state law and imposing restrictions on licensees does not amount to entitling one to engage in such businesses regardless of local law. Given that "every presumption" is in favor of upholding local ordinances (*HJS Dev., Inc.*, 148 Wn.2d at 477), we find no irreconcilable conflict between I-502's licensing system and the ability of local governments to prohibit licensees from operating in their jurisdictions.

We have considered and rejected a number of counterarguments in reaching this conclusion. First, one could argue that the statute, in allowing Board approval of

licenses at specific locations (RCW 69.50.325(1), (2), (3)), assumes that the Board can approve a license at any location in any jurisdiction. This argument proves far too much, however, for it suggests that a license from the Board could override any local zoning ordinance, even one unrelated to I-502. For example, I-502 plainly would not authorize a licensed marijuana retailer to locate in an area where a local jurisdiction's zoning allows no retail stores of any kind. The Board's own rules confirm this: "The issuance or approval of a license shall not be construed as a license for, or an approval of, any violations of local rules or ordinances including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements." WAC 314-55-020(11).

Second, one could argue that a local jurisdiction's prohibition on marijuana licensees conflicts with the provision in I-502 authorizing the Board to establish a maximum number of licensed retail outlets in each county. RCW 69.50.345(2); *see also* RCW 69.50.354. But there is no irreconcilable conflict here, because the Board is allowed to set only a maximum, and nothing in I-502 mandates a minimum number of licensees in any jurisdiction. The drafters of I-502 certainly could have provided for a minimum number of licensees per jurisdiction, which would have been a stronger indicator of preemptive intent, but they did not.

*[original page 9]*

Third, one could argue that because local jurisdictions are allowed to object to specific license applications and the Board is allowed to override those objections and grant the license anyway (RCW 69.50.331(7), (9)), local jurisdictions cannot have the power to ban licensees altogether. But such a ban can be harmonized with the objection process; while some jurisdictions might want to ban I-502 licensees altogether, others might want to allow them but still object to specific applicants or locations. Indeed, this is the system established under the state liquor statutes, which I-502 copied in many ways. *Compare* RCW 69.50.331 *with* RCW 66.24.010 (governing the issuance of marijuana licenses and liquor licenses, respectively, in parallel terms and including provisions for local government input regarding licensure). The state laws governing liquor allow local governments to object to specific applications (RCW 66.24.010), while also expressly authorizing local areas to prohibit the sale of liquor altogether. *See generally* RCW 66.40. That the liquor opt out statute coexists with the liquor licensing notice and comment process undermines any argument that a local marijuana ban irreconcilably conflicts with the marijuana licensing notice and comment opportunity.

Fourth, RCW 66.40 expressly allows local governments to ban the sale of liquor. Some may argue that by omitting such a provision, I-502's drafters implied an intent to bar local governments from banning the sale of marijuana. Intent to preempt, however, must be "clearly and expressly stated." *State ex rel. Schillberg*, 92 Wn.2d at 108. Moreover, it is important to remember that cities, towns, and counties derive their police power from article XI, section 11 of the Washington Constitution, not from statute. Thus, the relevant question is not whether the initiative provided local jurisdictions with such authority, but whether it removed local jurisdictions' preexisting authority.

Finally, in reaching this conclusion, we are mindful that if a large number of jurisdictions were to ban licensees, it could interfere with the measure's intent to supplant the illegal marijuana market. But this potential consequence is insufficient to overcome the lack of clear preemptive language or intent in the initiative itself. The

drafters of the initiative certainly could have used clear language preempting local bans. They did not. The legislature, or the people by initiative, can address this potential issue if it actually comes to pass.

With respect to your second question, about whether local jurisdictions can impose regulations making it “impractical” for I-502 licensees to locate and operate within their boundaries, the answer depends on whether such regulations constitute a valid exercise of the police power or otherwise conflict with state law. As a general matter, as discussed above, the Washington Constitution provides broad authority for local jurisdictions to regulate within their boundaries and impose land use and business licensing requirements. Ordinances must be a reasonable exercise of a jurisdiction’s police power in order to pass muster under article XI, section 11 of the state constitution. *Weden*, 135 Wn.2d at 700. A law is a reasonable regulation if it promotes public safety, health, or welfare and bears a reasonable and substantial relation to accomplishing the purpose pursued. *Id.* (applying this test to the personal watercraft ordinance); *see also Duckworth v. City of Bonney Lake*, 91 Wn.2d 19, 26, 586 P.2d 860 (1978) (applying this

*[original page 10]*

test to a zoning ordinance). Assuming local ordinances satisfy this test, and that no other constitutional or statutory basis for a challenge is presented on particular facts, we see no impediment to jurisdictions imposing additional regulatory requirements, although whether a particular ordinance satisfies this standard would of course depend on the specific facts in each case.

We trust that the foregoing will be useful to you.

ROBERT W.  
FERGUSON  
*Attorney  
General*

JESSICA FOGEL  
*Assistant  
Attorney  
General*

WROS

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[1] Useable marijuana means “dried marijuana flowers” and does not include marijuana-infused products. RCW 69.50.101(1).

[2] The provision for objections based upon chronic illegal activity is identical to one of the provisions for local jurisdictions to object to the granting or renewal of liquor licenses. RCW 66.24.010(12).

[3] RCW 69.50.608 provides: "The state of Washington fully occupies and preempts the entire field of setting penalties for violations of the controlled substances act. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to controlled substances that are consistent with this chapter. Such local ordinances shall have the same penalties as provided for by state law. Local laws and ordinances that are inconsistent with the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of the city, town, county, or municipality." The Washington Supreme Court has interpreted this provision as giving local jurisdictions concurrent authority to criminalize drug-related activity. *City of Tacoma v. Luvene*, 118 Wn.2d 826, 835, 827 P.2d 1374 (1992).

**RCW 35A.63.220**

**Moratoria, interim zoning controls — Public hearing — Limitation on length.**

A legislative body that adopts a moratorium or interim zoning ordinance, without holding a public hearing on the proposed moratorium or interim zoning ordinance, shall hold a public hearing on the adopted moratorium or interim zoning ordinance within at least sixty days of its adoption, whether or not the legislative body received a recommendation on the matter from the planning agency. If the legislative body does not adopt findings of fact justifying its action before this hearing, then the legislative body shall do so immediately after this public hearing. A moratorium or interim zoning ordinance adopted under this section may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium of [or] interim zoning ordinance may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal.

[1992 c 207 § 3.]

# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
<b>SUBJECT:</b> <b>PUBLIC HEARING –</b> <b>AB14-028,</b> <b>Imposing a moratorium upon</b> <b>marijuana manufacturing, distribution,</b> <b>and retail</b>	<b>Agenda Date: March 6, 2014</b>	<b>AB14-028</b>
	Mayor Dave Gordon	
	City Administrator Christy Todd	
	City Attorney P. Stephen DiJulio	<b>X</b>
	City Clerk – Brenda L. Martinez	
	Community Development – Stacey Welsh	<b>X</b>
	Finance – May Miller	
	Economic Development – Andy Williamson	
	Parks/Natural Resources – Aaron Nix	
	Police – Chief Kiblinger	
	Public Works – Seth Boettcher	
Court Administrator – Stephanie Metcalf		
Cost Impact (see also Fiscal Note): N/A		
Fund Source: N/A		
Timeline:		
<b>Agenda Placement:</b> <input type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input checked="" type="checkbox"/> City Administrator		
<b>Attachments: Public Hearing Notice, Ordinance No. 13-1012, Attorney General Opinion, RCW 35A.63.220</b>		
<b>SUMMARY STATEMENT:</b>  <p>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. The Council can consider extending the moratorium for one year with a work plan, as required by law to enact a one-year moratorium.</p> <p>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.</p> <p>It is anticipated that recreational marijuana will largely be a cash business, which increases the potential risk for crime. During the one-year moratorium, staff must consider public health and safety issues. Recent medical-cannabis-related crimes provide reasons for concern. For example, on February 17, 2014, a cannabis supplier killed a medical cannabis dispensary operator in the City of Renton. On February 14, 2014, a medical cannabis vendor was robbed at gunpoint when meeting with a potential client. There have been numerous other violent crimes in Washington state related to marijuana. On the other hand, the State of Washington voters have authorized and made legal under State law, the manufacture, packaging, distribution and</p>		

retail sale of marijuana and marijuana-infused products. The State Legislature is currently considering bills that would allow cities to share in the revenues from retail marijuana sales, in addition to the manufacture (growing) of marijuana.

In addition, and without limitation, staff should also analyze 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. Staff also requires additional time to assess whether or not amendments to its Comprehensive Plan land use designations, as well as amendments to the City’s land use codes are necessary or desirable in response to I-502.

The public hearing is to consider an extension of the 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. The extension proposed by City staff is for one year, with a work plan. The work plan, to be developed and presented on March 20, 2014, will allow City staff, the Planning Commission, and the City Council the necessary time to consider changes to State law from the 2014 legislative session, and to move any proposed zoning and development code changes through established governmental processes. This moratorium is authorized pursuant to RCW 35A.63.220, RCW 36.70A.390, and Attorney General Opinion 2014, No. 2.

FISCAL NOTE (Finance Department):  
None

COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: n/a

**RECOMMENDED ACTION: Conduct the public hearing relating to a one-year moratorium, with a work plan within the City of Black Diamond 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.**

**Following the public hearing, the Council will consider the moratorium and to direct staff accordingly.**

**RECORD OF COUNCIL ACTION**

<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
March 6, 2014		

Please publish in the next two (2) consecutive editions of the Voice of the Valley

**CITY OF BLACK DIAMOND  
NOTICE OF (2) PUBLIC HEARINGS**

Notice is hereby given that the Black Diamond City Council will be conducting two public hearings on Ordinance Nos. 13-1011 and 13-1012 (October 3, 2013): 1) regarding a proposed ordinance to extend a moratorium prohibiting the establishment, location, operation, licensing, maintenance, or continuation of any medical cannabis collective garden or any medical marijuana dispensary; and, 2) regarding a proposed ordinance to extend a moratorium prohibiting the acceptance or processing of applications, or issuance of permits and approvals, and uses or activities associated with production, processing, and retailing of cannabis (marijuana) and marijuana-infused products. The hearings are scheduled for Thursday, March 6, 2014 at 7:00 p.m. at the Black Diamond City Council Chambers, 25510 Lawson Street, Black Diamond, WA. The purpose of the hearing is to hear public testimony on the proposed moratoriums. Written comments may be submitted to the Clerk's office at 24301 Roberts Drive, PO Box 599, Black Diamond, WA, 98010 no later than 5:00 p.m. on March 6, 2014; otherwise, comments must be submitted at the hearings. Information is also available on the City's website [www.ci.blackdiamond.wa.us](http://www.ci.blackdiamond.wa.us) under "Public Notices." For further information please contact Stacey Welsh, Community Development Director at 360-886-5700.

Dated this 21st day of February, 2014  
Brenda L. Martinez, CMC  
City Clerk

**CITY OF BLACK DIAMOND**  
**WASHINGTON**  
**ORDINANCE NO. 13-1012**

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**AN ORDINANCE OF THE CITY OF BLACK DIAMOND, WASHINGTON, ADOPTING A SIX-MONTH MORATORIUM WITHIN THE CITY OF BLACK DIAMOND 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 ASSERTED TO BE AUTHORIZED OR ACTUALLY AUTHORIZED UNDER INITIATIVE MEASURE NO. I-502, OR ANY OTHER LAWS OF THE STATE OF WASHINGTON; PROVIDING FOR AN EFFECTIVE DATE; AND, PROVIDING FOR SEVERABILITY**

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**WHEREAS**, cannabis remains a Schedule I controlled substance under the federal Controlled Substances Act (CSA), and possession, distribution and use of cannabis is still a violation of federal law; and

**WHEREAS**, representatives of the United States Department of Justice have stated that although state law may authorize the use and possession of cannabis, persons who are in the business of, or knowingly facilitate, the business of cultivating, selling or distributing marijuana are in violation of the Federal Controlled Substances Act, regardless of state law, and that, state laws and local ordinances are not a defense to criminal or civil enforcement of federal law with regard to such conduct; and

**WHEREAS**, in a guidance memo dated August 29, 2013 addressed to all United States Attorneys, Deputy Attorney General James Cole stated that, the Justice Department will continue to enforce the federal prohibition against the illegal distribution and sale of marijuana consistent with certain enforcement priorities; that states that have enacted laws that authorize marijuana production, distribution, and possession pursuant to regulatory schemes that implement strong and effective regulatory and enforcement mechanisms consistent with these enforcement priorities are less likely to threaten federal enforcement priorities but that, such regulatory schemes remain subject to challenge by the federal government; and, that although federal prosecutors have discretion not to take enforcement action against persons operating pursuant to a state regulatory scheme, the guidance memo does not alter the United States Department of

Justice authority to enforce federal laws and is not a defense to violation of federal law, including any civil or criminal violation of the Controlled Substances Act; and

**WHEREAS**, the recently approved Initiative Measure No. 502 does not change the basis for the analysis by the U.S. Attorneys, and any State or local officials who undertake marijuana regulatory activities remain subject to federal prosecution; and

**WHEREAS**, despite such prohibition under federal law, the passage of Initiative 502 has legalized under Washington law the possession and private recreational use of marijuana and authorizes, subject to further promulgation of rules by the Washington State Liquor Control Board (WSLCB), the manufacture, packaging, distribution and retail sale of marijuana and marijuana infused products; and

**WHEREAS** the WSLCB has promulgated draft rules pertaining to licensing of the producers, processors, and retailers, and held public hearings throughout the state regarding the draft rules and has provided notice of the following schedule for adoption and implementation of the new rules, acceptance of license applications and commencement of issuance of licenses:

- October 9: Public hearing on proposed rules
- October 16: Board adopts proposed rules (CR 103)
- November 16: Rules become effective
- November 18: WSLCB begins accepting applications for all license types; and

**WHEREAS**, the City Council understands that although the voters have approved amendments to state law to permit the limited manufacture, packaging, distribution, retail sale, and recreational use and possession of cannabis, cannabis remains a Schedule I controlled substance under the federal Controlled Substances Act (CSA), and possession, distribution and use of cannabis is still a violation of federal law; and

**WHEREAS**, state law provides at RCW 69.51A.140 that cities may adopt and enforce any of the following pertaining to the production, processing, or dispensing of cannabis or cannabis products within their jurisdiction: zoning requirements, business licensing requirements, health and safety requirements, and business taxes; and

**WHEREAS**, the City requires time to analyze and determine the impacts and requirements of the new rules to be effective November 16<sup>th</sup>, to analyze the potential liabilities and limitations under federal law upon the production, processing, or dispensing of cannabis or cannabis products within the City, and to determine an appropriate regulatory and land use framework for any new uses that are allowed upon implementation of I-502; and

**WHEREAS**, pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City Council held a public hearing, at the City Council's regular meeting, at 7:00 p.m. in Council Chambers, on the 19<sup>th</sup> day of September 2013, in order to take public testimony regarding the moratorium as set forth herein; and

**WHEREAS**, after having considered the public testimony and based upon the foregoing, the City Council believes a moratorium is needed to preserve the status quo until the WSLCB adopts rules as required by I-502 and to allow the City time to study and draft potential comprehensive plan amendments, zoning and development regulations, business licensing regulations, and other regulatory controls pertaining to marijuana producers, processors, and retailers who receive a license from the WSLCB; and

**WHEREAS**, the City is authorized pursuant to RCW 35A.63.220 and RCW 36.70A.390 to adopt moratoria to preserve the status quo while code or comprehensive plan amendments are developed, considered, and enacted; and

**WHEREAS**, a moratorium is needed because of the imminence of the WSLCB finalizing licensing rules and issuing licenses to producers, processors, and retailers of marijuana and marijuana-infused products; and

**WHEREAS**, a moratorium is in the best interests of the City and is needed to preserve the public health, safety and welfare of the residents of the City;

**NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON DO ORDAIN AS FOLLOWS:**

**Section 1. Findings.** The recitals and findings set forth above are hereby adopted as the City Council's findings in support of the moratorium imposed by this ordinance.

**Section 2. Moratorium Imposed.** Pursuant to the provisions of Article 11, Section 11 of the Washington State Constitution, RCW 35A.63.220, and RCW 36.70A.390, a moratorium is hereby enacted prohibiting, within the City of Black Diamond, 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. For purposes of this ordinance, marijuana, marijuana-infused products, and the production, processing, and retailing of marijuana and marijuana-infused products shall be defined as provided for in Chapter 69.50 RCW as currently enacted or thereafter amended. No building permit, occupancy permit, or other development permit or approval shall be issued for any of the purposes or activities listed above, and no business license shall be granted or accepted while this moratorium is in effect. Any land use permits, business licenses or other permits for any of these operations that are issued as a result of error or by use of vague or deceptive descriptions during the moratorium are null and void, and without legal force or effect. The moratorium imposed hereunder shall constitute a regulation within the meaning of Section 8.02.020 of the Black Diamond Municipal Code.

**Section 3. No Nonconforming Uses.** No use that constitutes or purports to be a medical marijuana dispensary or medical marijuana collective garden as those terms are defined in this ordinance, that was engaged in that activity prior to the enactment of this ordinance shall be deemed to have been a legally established use under the provisions of the Black Diamond Municipal Code and that use shall not be entitled to claim legal nonconforming status.

**Section 4. Effective Period for Moratorium.** The moratorium set forth in this ordinance shall be in effect for a period of six months from the date this ordinance is passed and shall automatically expire at the conclusion of that six-month period unless the same is extended as provided in RCW 35A.63.220 and RCW 36.70A.390, or unless terminated sooner by the city council.

**Section 5. Corrections by City Clerk or Code Reviser.** Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; and ordinance numbering and section/subsection numbering.

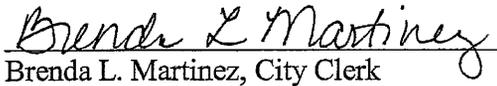
**Section 6. Effective Date.** This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication. The City Clerk is directed to publish a summary of this ordinance at the earliest possible publication date.

**Section 7. Severability.** If any one or more section, subsection, or sentence of this ordinance is held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,  
WASHINGTON, ON THIS 3<sup>RD</sup> DAY OF OCTOBER, 2013.**

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

Attest/Authenticated:

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

Approved as to Form:

\_\_\_\_\_  
Chris Bacha,  
Kenyon Disend, PLLC  
City Attorney

Filed with the City Clerk: October 4, 2013  
Passed by the City Council: October 3, 2012  
Ordinance No. 13-1012  
Date of Publication: October 11, 2013  
Effective Date: October 16, 2013



**STATUTES—INITIATIVE AND REFERENDUM—ORDINANCES—  
COUNTIES—CITIES AND TOWNS—PREEMPTION—POLICE POWERS—  
Whether Statewide Initiative Establishing System For Licensing  
Marijuana Producers, Processors, And Retailers Preempts Local  
Ordinances**

[Share](#)

- 1. Initiative 502, which establishes a licensing and regulatory system for marijuana producers, processors, and retailers, does not preempt counties, cities, and towns from banning such businesses within their jurisdictions.**
- 2. Local ordinances that do not expressly ban state-licensed marijuana licensees from operating within the jurisdiction but make such operation impractical are valid if they properly exercise the local jurisdiction's police power.**

January 16, 2014

The Honorable Sharon Foster  
Chair, Washington State Liquor Control Board  
3000 Pacific Avenue SE  
Olympia, WA 98504-3076

Cite As:  
AGO 2014 No. 2

Dear Chair Foster:

By letter previously acknowledged, you have requested our opinion on the following paraphrased questions:

- 1. Are local governments preempted by state law from banning the location of a Washington State Liquor Control Board licensed marijuana producer, processor, or retailer within their jurisdiction?**
- 2. May a local government establish land use regulations (in excess of the Initiative 502 buffer and other Liquor Control Board requirements) or business license requirements in a fashion that makes it impractical for a licensed marijuana business to locate within their jurisdiction?**

**BRIEF  
ANSWERS**

1. No. Under Washington law, there is a strong presumption against finding that state law preempts local ordinances. Although Initiative 502 (I-502) establishes a licensing and regulatory system for marijuana producers, processors, and retailers in Washington State, it includes no clear indication that it was intended to preempt local authority to regulate such

*[original page 2]*

businesses. We therefore conclude that I-502 left in place the normal powers of local governments to regulate within their jurisdictions.

2. Yes. Local governments have broad authority to regulate within their jurisdictions, and nothing in I-502 limits that authority with respect to licensed marijuana businesses.

## BACKGROUND

I-502 was approved by Washington voters on November 6, 2012, became effective 30 days thereafter, and is codified in RCW 69.50. It decriminalized under state law the possession of limited amounts of useable marijuana<sup>[1]</sup> and marijuana-infused products by persons twenty-one years or older. It also decriminalized under state law the production, delivery, distribution, and sale of marijuana, so long as such activities are conducted in accordance with the initiative's provisions and implementing regulations. It amended the implied consent laws to specify that anyone operating a motor vehicle is deemed to have consented to testing for the active chemical in marijuana, and amended the driving under the influence laws to make it a criminal offense to operate a motor vehicle under the influence of certain levels of marijuana.

I-502 also established a detailed licensing program for three categories of marijuana businesses: production, processing, and retail sales. The marijuana producer's license governs the production of marijuana for sale at wholesale to marijuana processors and other marijuana producers. RCW 69.50.325(1). The marijuana processor's license governs the processing, packaging, and labeling of useable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers. RCW 69.50.325(2). The marijuana retailer's license governs the sale of useable marijuana and marijuana-infused products in retail stores. RCW 69.50.325(3).

Applicants for producer, processor, and retail sales licenses must identify the location of the proposed business. RCW 69.50.325(1), (2), (3). This helps ensure compliance with the requirement that "no license may be issued authorizing a marijuana business within one thousand 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." RCW 69.50.331(8).

Upon receipt of an application for a producer, processor, or retail sales license, the Liquor Control Board must give notice of the application to the appropriate local jurisdiction. RCW 69.50.331(7)(a) (requiring notice to the chief executive officer of the incorporated city or town if the application is for a license within an incorporated city or town, or the county legislative authority if the application is for a license outside the boundaries of incorporated

*[original page 3]*

cities or towns). The local jurisdiction may file written objections with respect to the applicant or the premises for which the new or renewed license is sought. RCW 69.50.331(7)(b).

The local jurisdictions' written objections must include a statement of all facts upon which the objections are based, and may include a request for a hearing, which the Liquor Control Board may grant at its discretion. RCW 69.50.331(7)(c). The Board must give "substantial weight" to a local jurisdiction's objections based upon chronic illegal activity associated with the applicant's operation of the premises proposed to be licensed, the applicant's operation of any other licensed premises, or the conduct of the applicant's patrons inside or outside the licensed premises. RCW 69.50.331(9). Chronic illegal activity is defined as a pervasive pattern of activity that threatens the public health, safety, and welfare, or an unreasonably high number of citations for driving under the influence associated with the applicant's or licensee's operation of any licensed premises. RCW 69.50.331(9).<sup>[2]</sup>

In addition to the licensing provisions in statute, I-502 directed the Board to adopt rules establishing the procedures and criteria necessary to supplement the licensing and regulatory system. This includes determining the maximum number of retail outlets that may be licensed in each county, taking into consideration population distribution, security and safety issues, and the provision of adequate access to licensed sources of useable marijuana and marijuana-infused products to discourage purchases from the illegal market. RCW 69.50.345(2). The Board has done so, capping the number of retail licenses in the least populated counties of Columbia County, Ferry County, and Wahkiakum County at one and the number in the most populated county of King County at 61, with a broad range in between. *See* WAC 314-55-081.

The Board also adopted rules establishing various requirements mandated or authorized by I-502 for locating and operating marijuana businesses on licensed premises, including minimum residency requirements, age restrictions, and background checks for licensees and employees; signage and advertising limitations; requirements for insurance, recordkeeping, reporting, and taxes; and detailed operating plans for security, traceability, employee qualifications and training, and destruction of waste. *See generally* WAC 314-55.

Additional requirements apply for each license category. Producers must describe plans for transporting products, growing operations, and testing procedures and protocols. WAC 314-55-020(9). Processors must describe plans for transporting products, processing operations, testing procedures and protocols, and packaging and labeling. WAC 314-55-020(9). Finally, retailers must also describe which products will be sold and how they will be displayed, and may only operate between 8 a.m. and 12 midnight. WAC 314-55-020(9), -147.

The rules also make clear that receipt of a license from the Liquor Control Board does not entitle the licensee to locate or operate a marijuana processing, producing, or retail business in violation of local rules or without any necessary approval from local jurisdictions. WAC 314-

*[original page 4]*

-55-020(11) provides as follows: "The issuance or approval of a license shall not be construed as a license for, or an approval of, any violations of local rules or ordinances

including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements.

## ANALYSIS

Your question acknowledges that local governments have jurisdiction over land use issues like zoning and may exercise the option to issue business licenses. This authority comes from article XI, section 11 of the Washington Constitution, which provides that “[a]ny county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.” The limitation on this broad local authority requiring that such regulations not be “in conflict with general laws” means that state law can preempt local regulations and render them unconstitutional either by occupying the field of regulation, leaving no room for concurrent local jurisdiction, or by creating a conflict such that state and local laws cannot be harmonized. *Lawson v. City of Pasco*, 168 Wn.2d 675, 679, 230 P.3d 1038 (2010).

Local ordinances are entitled to a presumption of constitutionality. *State v. Kirwin*, 165 Wn.2d 818, 825, 203 P.3d 1044 (2009). Challengers to a local ordinance bear a heavy burden of proving it unconstitutional. *Id.* “Every presumption will be in favor of constitutionality.” *HJS Dev., Inc. v. Pierce County ex rel. Dep’t of Planning & Land Servs.*, 148 Wn.2d 451, 477, 61 P.3d 1141 (2003) (internal quotation marks omitted).

### A. Field Preemption

Field preemption arises when a state regulatory system occupies the entire field of regulation on a particular issue, leaving no room for local regulation. *Lawson*, 168 Wn.2d at 679. Field preemption may be expressly stated or may be implicit in the purposes or facts and circumstances of the state regulatory system. *Id.*

I-502 does not express any indication that the state licensing and operating system preempts the field of marijuana regulation. Although I-502 was structured as a series of amendments to the controlled substances act, which does contain a preemption section, that section makes clear that state law “fully occupies and preempts the entire field of *setting penalties* for violations of the controlled substances act.” RCW 69.50.608 (emphasis added).<sup>[3]</sup> It also allows “[c]ities, towns, and counties or other municipalities [to] enact only those laws and

*[original page 5]*

ordinances relating to controlled substances that are consistent with this chapter.” RCW 69.50.608. Nothing in this language expresses an intent to preempt the entire field of regulating businesses licensed under I-502.

With respect to implied field preemption, the “legislative intent” of an initiative is derived from the collective intent of the people and can be ascertained by material in the official voter’s pamphlet. *Dep’t of Revenue v. Hoppe*, 82 Wn.2d 549, 552, 512 P.2d 1094 (1973); see also *Roe v. TeleTech Customer Care Mgmt., LLC*, 171 Wn.2d 736, 752-53, 257 P.3d 586 (2011). Nothing in the official voter’s pamphlet evidences a collective intent for the state regulatory system to preempt the entire field of marijuana business licensing or operation. Voters’ Pamphlet 23-30 (2012). Moreover, both your letter and the Liquor Control Board’s rules recognize the authority of local jurisdictions to impose regulations on state licensees. These facts, in

addition to the absence of express intent suggesting otherwise, make clear that I-502 and its implementing regulations do not occupy the entire field of marijuana business regulation.

### **B. Conflict Preemption**

Conflict preemption arises “when an ordinance permits what state law forbids or forbids what state law permits.” *Lawson*, 168 Wn.2d at 682. An ordinance is constitutionally invalid if it directly and irreconcilably conflicts with the statute such that the two cannot be harmonized. *Id.*; *Weden v. San Juan County*, 135 Wn.2d 678, 693, 958 P.2d 273 (1998). Because “[e]very presumption will be in favor of constitutionality,” courts make every effort to reconcile state and local law if possible. HJS Dev., 148 Wn.2d at 477 (internal quotation marks omitted). We adopt this same deference to local jurisdictions.

An ordinance banning a particular activity directly and irreconcilably conflicts with state law when state law specifically entitles one to engage in that same activity in circumstances outlawed by the local ordinance. For example, in *Entertainment Industry Coalition v. Tacoma-Pierce County Health Department*, 153 Wn.2d 657, 661-63, 105 P.3d 985 (2005), the state law in effect at the time banned smoking in public places except in designated smoking areas, and specifically authorized owners of certain businesses to designate smoking areas. The state law provided, in relevant part: “A smoking area may be designated in a public place by the owner . . . .” Former RCW 70.160.040(1) (2004), *repealed by* Laws of 2006, ch. 2, § 7(2) (Initiative Measure 901). The Tacoma-Pierce County Health Department ordinance at issue banned smoking in all public places. The Washington Supreme Court struck down the ordinance as directly and irreconcilably conflicting with state law because it prohibited what the state law authorized: the business owner’s choice whether to authorize a smoking area.

Similarly, in *Parkland Light & Water Co. v. Tacoma-Pierce County Board of Health*, 151 Wn.2d 428, 90 P.3d 37 (2004), the Washington Supreme Court invalidated a Tacoma-Pierce County Health Department ordinance requiring fluoridated water. The state law at issue authorized the water districts to decide whether to fluoridate, saying: “A water district by a

*[original page 6]*

majority vote of its board of commissioners may fluoridate the water supply system of the water district.” RCW 57.08.012. The Court interpreted this provision as giving water districts the ability to regulate the content and supply of their water systems. *Parkland Light & Water Co.*, 151 Wn.2d at 433. The local health department’s attempt to require fluoridation conflicted with the state law expressly giving that choice to the water districts. As they could not be reconciled, the Court struck down the ordinance as unconstitutional under conflict preemption analysis.

By contrast, Washington courts have consistently upheld local ordinances banning an activity when state law regulates the activity but does not grant an unfettered right or entitlement to engage in that activity. In *Weden v. San Juan County*, the Court upheld the constitutionality of the County’s prohibition on motorized personal watercraft in all marine waters and one lake in San Juan County. The state laws at issue created registration and safety requirements for vessels and prohibited operation of unregistered vessels. The Court rejected the argument that state

regulation of vessels constituted permission to operate vessels anywhere in the state, saying, “[n]owhere in the language of the statute can it be suggested that the statute creates an unabridged right to operate [personal watercraft] in all waters throughout the state.” *Weden*, 135 Wn.2d at 695. The Court further explained that “[r]egistration of a vessel is nothing more than a precondition to operating a boat.” *Id.* “No unconditional right is granted by obtaining such registration.” *Id.* Recognizing that statutes often impose preconditions without granting unrestricted permission to participate in an activity, the Court also noted the following examples: “[p]urchasing a hunting license is a precondition to hunting, but the license certainly does not allow hunting of endangered species or hunting inside the Seattle city limits,” and “[r]eaching the age of 16 is a precondition to driving a car, but reaching 16 does not create an unrestricted right to drive a car however and wherever one desires.” *Id.* at 695 (internal citation omitted).

Relevant here, the dissent in *Weden* argued: “Where a state statute licenses a particular activity, counties may enact reasonable regulations of the licensed activity within their borders but they may not prohibit same outright[,]” and that an ordinance banning the activity “renders the state permit a license to do nothing at all.” *Weden*, 135 Wn.2d at 720, 722 (Sanders, J., dissenting). The majority rejected this approach, characterizing the state law as creating not an unabridged right to operate personal watercraft in the state, but rather a registration requirement that amounted only to a precondition to operating a boat in the state.

In *State ex rel. Schillberg v. Everett District Justice Court*, 92 Wn.2d 106, 594 P.2d 448 (1979), the Washington Supreme Court similarly upheld a local ban on internal combustion motors on certain lakes. The Court explained: “A statute will not be construed as taking away the power of a municipality to legislate unless this intent is clearly and expressly stated.” *Id.* at 108. The Court found no conflict because nothing in the state laws requiring safe operation of vessels either expressly or impliedly provided that vessels would be allowed on all waters of the state.

*[original page 7]*

The Washington Supreme Court also rejected a conflict preemption challenge to the City of Pasco’s ordinance prohibiting placement of recreational vehicles within mobile home parks. *Lawson*, 168 Wn.2d at 683-84. Although state law regulated rights and duties arising from mobile home tenancies and recognized that such tenancies may include recreational vehicles, the Court reasoned “[t]he statute does not forbid recreational vehicles from being placed in the lots, nor does it create a right enabling their placement.” *Id.* at 683. The state law simply regulated recreational vehicle tenancies, where such tenancies exist, but did not prevent municipalities from deciding whether or not to allow them. *Id.* at 684.

Accordingly, the question whether “an ordinance . . . forbids what state law permits” is more complex than it initially appears. *Lawson*, 168 Wn.2d at 682. The question is not whether state law permits an activity in some places or in some general sense; even “[t]he fact that an activity may be licensed under state law does not lead to the conclusion that it must be permitted under local law.” *Rabon v. City of Seattle*, 135 Wn.2d 278, 292, 957 P.2d 621 (1998) (finding no preemption where state law authorized licensing of “dangerous dogs” while city ordinance forbade ownership of “vicious animals”). Rather, a challenger must meet the heavy burden of proving that state law creates an entitlement to engage in an activity in circumstances outlawed by the local ordinance. For example, the state laws authorizing business

owners to designate smoking areas and water districts to decide whether to fluoridate their water systems amounted to statewide entitlements that local jurisdictions could not take away. But the state laws requiring that vessels be registered and operated safely and regulating recreational vehicles in mobile home tenancies simply contemplated that those activities would occur in some places and established preconditions; they did not, however, override the local jurisdictions' decisions to prohibit such activities.

Here, I-502 authorizes the Liquor Control Board to issue licenses for marijuana producers, processors, and retailers. Whether these licenses amount to an entitlement to engage in such businesses regardless of local law or constitute regulatory preconditions to engaging in such businesses is the key question, and requires a close examination of the statutory language.

RCW 69.50.325 provides, in relevant part:

(1) There shall be a marijuana producer's license to produce marijuana for sale at wholesale to marijuana processors and other marijuana producers, regulated by the state liquor control board and subject to annual renewal. . .

..

(2) There shall be a marijuana processor's license to process, package, and label useable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers, regulated by the state liquor control board and subject to annual renewal. . . .

***[original page 8]***

(3) There shall be a marijuana retailer's license to sell useable marijuana and marijuana-infused products at retail in retail outlets, regulated by the state liquor control board and subject to annual renewal. . . .

RCW 69.50.325(1)-(3). Each of these subsections also includes language providing that activities related to such licenses are not criminal or civil offenses under Washington state law, provided they comply with I-502 and the Board's rules, and that the licenses shall be issued in the name of the applicant and shall specify the location at which the applicant intends to operate. They also establish fees for issuance and renewal and clarify that a separate license is required for each location at which the applicant intends to operate. RCW 69.50.325.

While these provisions clearly authorize the Board to issue licenses for marijuana producers, processors, and retail sales, they lack the definitive sort of language that would be necessary to meet the heavy burden of showing state preemption. They simply state that there "shall be a . . . license" and that engaging in such activities with a license "shall not be a criminal or civil offense under Washington state law." RCW 69.50.325(1). Decriminalizing such activities under state law and imposing restrictions on licensees does not amount to entitling one to engage in such businesses regardless of local law. Given that "every presumption" is in favor of upholding local ordinances (*HJS Dev., Inc.*, 148 Wn.2d at 477), we find no irreconcilable conflict between I-502's licensing system and the ability of local governments to prohibit licensees from operating in their jurisdictions.

We have considered and rejected a number of counterarguments in reaching this conclusion. First, one could argue that the statute, in allowing Board approval of

licenses at specific locations (RCW 69.50.325(1), (2), (3)), assumes that the Board can approve a license at any location in any jurisdiction. This argument proves far too much, however, for it suggests that a license from the Board could override any local zoning ordinance, even one unrelated to I-502. For example, I-502 plainly would not authorize a licensed marijuana retailer to locate in an area where a local jurisdiction's zoning allows no retail stores of any kind. The Board's own rules confirm this: "The issuance or approval of a license shall not be construed as a license for, or an approval of, any violations of local rules or ordinances including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements." WAC 314-55-020(11).

Second, one could argue that a local jurisdiction's prohibition on marijuana licensees conflicts with the provision in I-502 authorizing the Board to establish a maximum number of licensed retail outlets in each county. RCW 69.50.345(2); *see also* RCW 69.50.354. But there is no irreconcilable conflict here, because the Board is allowed to set only a maximum, and nothing in I-502 mandates a minimum number of licensees in any jurisdiction. The drafters of I-502 certainly could have provided for a minimum number of licensees per jurisdiction, which would have been a stronger indicator of preemptive intent, but they did not.

*[original page 9]*

Third, one could argue that because local jurisdictions are allowed to object to specific license applications and the Board is allowed to override those objections and grant the license anyway (RCW 69.50.331(7), (9)), local jurisdictions cannot have the power to ban licensees altogether. But such a ban can be harmonized with the objection process; while some jurisdictions might want to ban I-502 licensees altogether, others might want to allow them but still object to specific applicants or locations. Indeed, this is the system established under the state liquor statutes, which I-502 copied in many ways. *Compare* RCW 69.50.331 *with* RCW 66.24.010 (governing the issuance of marijuana licenses and liquor licenses, respectively, in parallel terms and including provisions for local government input regarding licensure). The state laws governing liquor allow local governments to object to specific applications (RCW 66.24.010), while also expressly authorizing local areas to prohibit the sale of liquor altogether. *See generally* RCW 66.40. That the liquor opt out statute coexists with the liquor licensing notice and comment process undermines any argument that a local marijuana ban irreconcilably conflicts with the marijuana licensing notice and comment opportunity.

Fourth, RCW 66.40 expressly allows local governments to ban the sale of liquor. Some may argue that by omitting such a provision, I-502's drafters implied an intent to bar local governments from banning the sale of marijuana. Intent to preempt, however, must be "clearly and expressly stated." *State ex rel. Schillberg*, 92 Wn.2d at 108. Moreover, it is important to remember that cities, towns, and counties derive their police power from article XI, section 11 of the Washington Constitution, not from statute. Thus, the relevant question is not whether the initiative provided local jurisdictions with such authority, but whether it removed local jurisdictions' preexisting authority.

Finally, in reaching this conclusion, we are mindful that if a large number of jurisdictions were to ban licensees, it could interfere with the measure's intent to supplant the illegal marijuana market. But this potential consequence is insufficient to overcome the lack of clear preemptive language or intent in the initiative itself. The

drafters of the initiative certainly could have used clear language preempting local bans. They did not. The legislature, or the people by initiative, can address this potential issue if it actually comes to pass.

With respect to your second question, about whether local jurisdictions can impose regulations making it “impractical” for I-502 licensees to locate and operate within their boundaries, the answer depends on whether such regulations constitute a valid exercise of the police power or otherwise conflict with state law. As a general matter, as discussed above, the Washington Constitution provides broad authority for local jurisdictions to regulate within their boundaries and impose land use and business licensing requirements. Ordinances must be a reasonable exercise of a jurisdiction’s police power in order to pass muster under article XI, section 11 of the state constitution. *Wedel*, 135 Wn.2d at 700. A law is a reasonable regulation if it promotes public safety, health, or welfare and bears a reasonable and substantial relation to accomplishing the purpose pursued. *Id.* (applying this test to the personal watercraft ordinance); *see also Duckworth v. City of Bonney Lake*, 91 Wn.2d 19, 26, 586 P.2d 860 (1978) (applying this

*[original page 10]*

test to a zoning ordinance). Assuming local ordinances satisfy this test, and that no other constitutional or statutory basis for a challenge is presented on particular facts, we see no impediment to jurisdictions imposing additional regulatory requirements, although whether a particular ordinance satisfies this standard would of course depend on the specific facts in each case.

We trust that the foregoing will be useful to you.

ROBERT W.  
FERGUSON  
*Attorney  
General*

JESSICA FOGEL  
*Assistant  
Attorney  
General*

WTOS

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[1] Useable marijuana means “dried marijuana flowers” and does not include marijuana-infused products. RCW 69.50.101(11).

[2] The provision for objections based upon chronic illegal activity is identical to one of the provisions for local jurisdictions to object to the granting or renewal of liquor licenses. RCW 66.24.010(12).

[3] RCW 69.50.608 provides: "The state of Washington fully occupies and preempts the entire field of setting penalties for violations of the controlled substances act. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to controlled substances that are consistent with this chapter. Such local ordinances shall have the same penalties as provided for by state law. Local laws and ordinances that are inconsistent with the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of the city, town, county, or municipality." The Washington Supreme Court has interpreted this provision as giving local jurisdictions concurrent authority to criminalize drug-related activity. *City of Tacoma v. Luvene*, 118 Wn.2d 826, 835, 827 P.2d 1374 (1992).

**RCW 35A.63.220**

**Moratoria, interim zoning controls — Public hearing — Limitation on length.**

A legislative body that adopts a moratorium or interim zoning ordinance, without holding a public hearing on the proposed moratorium or interim zoning ordinance, shall hold a public hearing on the adopted moratorium or interim zoning ordinance within at least sixty days of its adoption, whether or not the legislative body received a recommendation on the matter from the planning agency. If the legislative body does not adopt findings of fact justifying its action before this hearing, then the legislative body shall do so immediately after this public hearing. A moratorium or interim zoning ordinance adopted under this section may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium of [or] interim zoning ordinance may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal.

[1992 c 207 § 3.]

# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
<b>SUBJECT:</b> <b>AB14-025A,</b> <b>Confirming the Mayor's Planning Commission Appointments in accordance with Resolution No. 14-931</b>	<b>Agenda Date: March 6, 2014</b>	
	<b>AB14-025A</b>	
	Mayor Dave Gordon	X
	City Administrator Christy Todd	
	City Attorney P. Stephen DiJulio	
	City Clerk – Brenda L. Martinez	
	Community Development – Stacey Welsh	
	Finance – May Miller	
	Economic Development – Andy Williamson	
	Parks/Natural Resources – Aaron Nix	
Cost Impact (see also Fiscal Note):	Police – Chief Kiblinger	
Fund Source:	Public Works – Seth Boettcher	
Timeline:	Court Administrator – Stephanie Metcalf	
<b>Agenda Placement:</b> <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
<b>Attachments: Resolution No. 14-931</b>		
<b>SUMMARY STATEMENT:</b>  Position No. 6 and Position No. 7 of the Black Diamond Planning Commission expired on December 31, 2013. Staff advertised for the vacancies in 2013 and early 2014 and six applications were received. After review of the applications the Mayor is seeking confirmation of his appointments of Brian Weber to Position No. 6 and Gary Davis to Position No. 7; both terms expire on December 31, 2017.		
<b>FISCAL NOTE (Finance Department):</b> N/A		
<b>COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:</b>		
<b>RECOMMENDED ACTION: MOTION to adopt Resolution No. 14-931, confirming the Mayor's Planning Commission appointments.</b>		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
February 20, 2014	No action on this item, motion to conduct a public interview process before confirmation of the candidates - PASSED (5-0)	
March 6, 2014		

**RESOLUTION NO. 14-931**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BLACK DIAMOND, KING COUNTY, WASHINGTON  
CONFIRMING THE MAYOR'S APPOINTMENTS TO THE  
PLANNING COMMISSION**

**WHEREAS**, in accordance with Black Diamond Municipal Code 2.24.010, members of the Planning Commission shall be appointed by the Mayor and confirmed by the City Council; and

**WHEREAS**, this Resolution confirms the Mayor's appointments to the City of Black Diamond Planning Commission;

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

**Section 1.** That the Mayor's appointment of Brian Weber to the City of Black Diamond Planning Commission Position No. 6 is hereby confirmed; said term to expire on December 31, 2017.

**Section 2.** That the Mayor's appointment of Gary Davis to the City of Black Diamond Planning Commission Position No. 7 is hereby confirmed; said term to expire on December 31, 2017.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT  
A REGULAR MEETING THEREOF, THIS 6<sup>TH</sup> DAY OF MARCH, 2014.**

CITY OF BLACK DIAMOND:

\_\_\_\_\_  
Dave Gordon, Mayor

Attest:

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

# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
<b>SUBJECT:</b> <b>AB14-029</b> <b>Appointing Carol Morris of Morris Law, P.C. as City Attorney; and confirming the Mayor's appointment in accordance with Resolution No. 14-933</b>	<b>Agenda Date: March 6, 2014</b>	
	<b>AB14-029</b>	
	Mayor Dave Gordon	X
	City Administrator Christy Todd	
	City Attorney P. Stephen DiJulio	
	City Clerk – Brenda L. Martinez	
	Community Development – Stacey Welsh	
	Finance – May Miller	
	Economic Development – Andy Williamson	
	Parks/Natural Resources – Aaron Nix	
Cost Impact (see also Fiscal Note):	Police – Chief Kiblinger	
Fund Source:	Public Works – Seth Boettcher	
Timeline:	Court Administrator – Stephanie Metcalf	
<b>Agenda Placement:</b> <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
<b>Attachments: Resolution No. 14-933</b>		
<b>SUMMARY STATEMENT:</b>  On February 27, at a Special Meeting, the City Council considered three applicants for the City Attorney position. The Council adjourned into executive session following presentations by three law firms. The Council reconvened into open session and a motion was made and seconded to bring a resolution and professional services contract to the Council on March 6, reflecting the Mayor's appointment and the Council's confirmation of Morris Law, P.C. for the general counsel legal services, with Carol Morris as the City Attorney.		
<b>FISCAL NOTE (Finance Department):</b>  A professional services agreement is being negotiated at the time of the preparation of the agenda bill and the cost for City Attorney services will be discussed with the Council on March 6, 2014.		
<b>COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:</b>		
<b>RECOMMENDED ACTION: MOTION to adopt Resolution No. 14-933, appointing Carol Morris, of Morris Law, P.C., as City Attorney, and confirming the appointment.</b>		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
March 6, 2014		

**RESOLUTION NO. 14-933**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BLACK DIAMOND, KING COUNTY, WASHINGTON  
CONFIRMING THE MAYOR'S APPOINTMENT OF CAROL  
MORRIS, OF MORRIS LAW, P.C. AS CITY ATTORNEY**

**WHEREAS**, the Mayor has appointed Carol Morris of Morris Law, P.C. to the position of City Attorney and seeks City Council confirmation of this appointment; and

**WHEREAS**, the Council supports the Mayor's selection of Ms. Morris;

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

**Section 1.** The Mayor hereby appoints Carol Morris, of Morris Law, P.C. as City Attorney.

**Section 2.** The City Council hereby confirms the Mayor's appointment of Carol Morris of Morris Law, P.C. as City Attorney.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,  
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 6<sup>TH</sup> DAY OF MARCH,  
2014.**

CITY OF BLACK DIAMOND:

\_\_\_\_\_  
Dave Gordon, Mayor

Attest:

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

# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
<b>SUBJECT:</b> <b>AB14-030</b> <b>Authorizing the Mayor to execute a professional services agreement with Morris Law, P.C. in accordance with Resolution No. 14-934</b>	<b>Agenda Date: March 6, 2014</b>	
	<b>AB14-030</b>	
	Mayor Dave Gordon	<b>X</b>
	City Administrator Christy Todd	
	City Attorney P. Stephen DiJulio	
	City Clerk – Brenda L. Martinez	
	Community Development – Stacey Welsh	
	Finance – May Miller	
	Economic Development – Andy Williamson	
	Parks/Natural Resources – Aaron Nix	
	Court Administrator – Stephanie Metcalf	
Cost Impact (see also Fiscal Note):		
Fund Source:		
Timeline:		
<b>Agenda Placement:</b> <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
<b>Attachments: Resolution No. 14-934</b>		
<b>SUMMARY STATEMENT:</b>  <p>On February 27, at a Special Meeting, the City Council considered three applicants for the City Attorney position. The Council adjourned into executive session following presentations by three law firms. The Council reconvened into open session and a motion was made and seconded to bring a resolution and professional services contract to the Council on March 6, reflecting the Mayor’s appointment and the Council’s confirmation of Morris Law, P.C. for the general counsel legal services, with Carol Morris as the City Attorney.</p> <p>It is necessary to enter into a professional services agreement with Morris Law, P.C. for the City Attorney Services. An agreement has been negotiated by the City Administrator, with the assistance of Interim City Attorney P. Stephen DiJulio, and is presented to the Council for its consideration and approval.</p> <p>FISCAL NOTE (Finance Department):</p> <p>A professional services agreement was being negotiated at the time of the preparation of the agenda bill and the negotiated cost for City Attorney services will be discussed with the Council on March 6, 2014, and a contract for services will be presented on or prior to March 6, 2014.</p>		
<b>COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:</b>		
<b>RECOMMENDED ACTION: MOTION to adopt Resolution No. 14-934, authorizing the Mayor to execute a professional services agreement with Morris Law, P.C.</b>		
<b>RECORD OF COUNCIL ACTION</b>		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
March 6, 2014		

**RESOLUTION NO. 14-934**

**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 MORRIS  
LAW, P.C.**

**WHEREAS**, the Council has confirmed the Mayor's appointment of Carol Morris of Morris Law, P.C., as City Attorney; and

**WHEREAS**, the Council finds the proposed professional services contract with Morris Law, P.C. to be fair and reasonable;

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

**Section 1.** The City Council hereby authorizes the Mayor, on behalf of the City, to execute a professional services agreement with Morris Law, P.C. substantially in the form attached hereto as Exhibit A.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,  
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 6<sup>TH</sup> DAY OF MARCH,  
2014.**

CITY OF BLACK DIAMOND:

\_\_\_\_\_  
Dave Gordon, Mayor

Attest:

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

## **CITY OF BLACK DIAMOND PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement (“Agreement”) is entered into by and between:

CITY OF BLACK DIAMOND, WASHINGTON (the “City”)

Physical Address: 24301 Roberts Drive

Mailing Address: PO Box 599

Black Diamond, WA 98010

Contact: City Administrator

Phone: 360-886-5700

Fax : 360-886-2592

and

Carol Morris, Morris Law, P.C. (“Consultant”)

3304 Rosedale Street NW

Gig Harbor, WA 98335

Contact: Carol Morris

Phone: 253-851-5090

Fax: 360-850-1099

Tax Id No.: 91-1978611

for professional services in connection with the provision of City Attorney services.

### **TERMS AND CONDITIONS**

#### **1. Services by Consultant**

1.1 Consultant shall perform the services described in the Scope of Work attached to this Agreement as Exhibit "A." The services performed by Consultant shall not exceed the Scope of Work nor shall the Consultant be entitled to a greater amount of compensation as that provided in this Agreement without the prior written authorization of the City.

1.2 The City may from time to time require changes or modifications in the Scope of Work. Such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to this Agreement.

1.3 Consultant represents and warrants that it, and its staff, have the requisite training, skill, and experience necessary to provide the services required by this Agreement and are appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant under this Agreement will be performed in a manner consistent

with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

## **2. Schedule of Work**

2.1 Consultant shall perform the services described in the Scope of Work Exhibit "A" in a timely manner.

2.2 Consultant is authorized to proceed with services upon execution of this agreement and the services performed prior to the execution of this Agreement, as approved by City Administrator, are hereby ratified and authorized.

## **3. Compensation and Payment**

3.1 Hourly Fees. The City shall pay the Consultant for work performed at the hourly rate of \$220.00, with amount for subsequent years increased pursuant to Seattle-Tacoma-Bremerton CPI-U, with minimum increase of 2% per year and maximum increase of 4% per year. Associates and Legal Assistants will bill only with advance permission of the Mayor or City Administrator. The hourly rate for Consultant's Associates is \$200.00 and for Consultant's Legal Assistants is \$75.00. The parties will renegotiate the City Attorney's compensation for the year 2015 according to this paragraph on or before December 1, 2014, but no amendment to this Agreement shall be effective unless it is reduced to writing.

3.2 Compensation for Consultant Review of Development Proposals. On all projects for which the City is able to seek reimbursement pursuant to an ordinance or other Council-adopted agreement that authorizes such reimbursement from a development proponent for the City's costs, the City Attorney shall charge its regular hourly rates as specified in Section 3.1. The types of projects included in this category are, but are not limited to: LID's, ULID's, annexations not initiated by the City, development agreements and associated implementing permit and plan approval, latecomer's agreements, and all other projects for which the City is entitled to receive reimbursement from a third party.

3.3 Reimbursable Costs. The Consultant shall be reimbursed for costs and advances for such items such as legal messenger services, court filing fees, large copying or mailing projects and other similar expense items.

3.4 Consultant shall maintain time and expense records and provide them to the City monthly, along with monthly invoices, in a format acceptable to the City for work performed to the date of the invoice.

3.5 All invoices shall be paid by City warrant within sixty (60) days of actual receipt by the City of an invoice conforming in all respects to the terms of this Agreement.

3.6 Consultant shall keep cost records and accounts pertaining to this Agreement available for inspection by City representatives for three (3) years after final payment unless a

longer period is required by a third-party agreement. Consultant shall make copies available to the City on request.

3.7 If the services rendered do not meet the requirements of the Agreement, Consultant will correct or modify the work to comply with the Agreement. The City may withhold payment for such work until the work meets the requirements of the Agreement.

#### **4. Term**

The term of this Agreement shall be from the date this Agreement is fully executed by both parties, until terminated by either party pursuant to the terms hereof.

#### **5. Discrimination and Compliance with Laws**

5.1 Consultant agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.

5.2 Consultant shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.

5.3 Any violation of this Section 5 shall be a material breach of this Agreement and grounds for immediate cancellation, or termination, of the Agreement by the City, in whole or in part, and may result in Consultant's ineligibility to conduct further work for the City.

#### **6. Termination of Agreement**

Either party may terminate this Agreement with or without cause, by providing sixty (60) days written notice to the other party. The City also reserves the right to terminate this Agreement at any time, without cause, by giving Consultant notice in writing ten (10) days prior to the termination date. In the event of termination, all finished or unfinished reports, or other material prepared by Consultant pursuant to this Agreement, shall be submitted to the City. Consultant shall be entitled to compensation for any satisfactory work completed on the Project prior to the date of termination.

#### **7. Standard of Care**

Consultant represents and warrants that it has the requisite training, skill, and experience necessary to provide the services under this Agreement and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services Consultant provides under this Agreement will be performed in a manner consistent with that

degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances. Consultant understands and agrees that the services rendered pursuant to this Agreement are for the sole exclusive benefit of the City and that no third party shall have authority to authorize, approve, direct or control any of the services rendered to the City pursuant to this Agreement.

## **8. Ownership of Work Product**

8.1 Ownership of the originals of any reports, data, studies, surveys, charts, maps, drawings, specifications, figures, photographs, memoranda, and any other documents which are developed, compiled, or produced as a result of this Agreement, whether or not completed, shall be vested in the City and shall be submitted to the City upon termination of this Agreement. Any reuse of these materials by the City for projects or purposes other than those that fall within the scope of this Agreement and the Project to which it relates, without written concurrence by Consultant, will be at the sole risk of the City.

8.2 The City acknowledges Consultant's documents as instruments of professional service. Nevertheless, the documents prepared under this Agreement shall become the property of the City upon completion of the work. The City agrees to hold harmless and indemnify Consultant against all claims made against Consultant for damage or injury, including defense costs, arising out of the City's reuse of such documents beyond the use for which they were originally intended without the written authorization of Consultant.

8.3 Methodology, software, logic, and systems developed under this Agreement are the property of Consultant and the City, and may be used as either Consultant or the City see fit, including the right to revise or publish the same without limitation.

## **9. Indemnification/Hold Harmless**

Consultant shall indemnify, and hold the City, its officers, employees, agents and volunteers harmless from all reasonable claims, injuries, damages, losses or suits including attorney fees, arising directly or indirectly out of or resulting from the negligent acts, errors, or omissions of Consultant in performance of this Agreement, except for injuries and damages caused by the concurrent negligence of the City. Provided, however, that if any such claims, injuries, damages, losses or suits result from the concurrent negligence of Consultant and the City, and the City's officers, employees, agents or volunteers it is expressly agreed that Consultant's obligations and indemnity under this paragraph shall be effective only to the extent of Consultant's negligence.

## **10. Insurance**

10.1 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 performance of the work hereunder by Consultant, its agents, representatives, or employees

10.2 Consultant shall procure and maintain the following types and amounts of insurance:

a. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage. This insurance shall have a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

b. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

c. Professional Liability insurance appropriate to Consultant's profession, with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

10.3 The Automobile Liability, Commercial General Liability, and Professional Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

a. Consultant's insurance coverage shall be primary insurance vis-à-vis the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess over Consultant's insurance and shall not contribute with it.

b. Consultant's insurance shall not be cancelled, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

10.4 If allowed under Consultant's coverage for professional liability coverage, the City shall be named as an additional insured. The City shall be named as an additional insured under Consultant's Automobile Liability insurance policy with respect to the work to be performed for the City pursuant to this Agreement.

10.5 Insurance shall be placed with insurers with a current A.M. Best rating of not less than A:VII.

10.6 Declaration pages issued by the insurance carriers for the policies mentioned in this Section 10 showing such insurance to be in force shall be filed with the City not less than ten (10) days following both parties signing this Agreement and before commencement of the work. In addition, the City may request, in writing, a full copy from Consultant of any insurance policy Consultant must procure and maintain pursuant to this Agreement and Consultant must provide such copy to the City within ten (10) days of Consultant's receipt of the City's request. Any policy or required insurance written on a claims-made basis shall provide coverage as to all claims arising out of the services performed under this Agreement and for three (3) years following completion of the services to be performed. It shall be a material breach of this Agreement for Consultant to fail to procure and maintain the insurance required by this Section 10 or to provide the proof of such insurance to the City as provided for in this Agreement.

## **11. Assigning or Subcontracting**

Consultant shall not assign, transfer, subcontract, or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the City, which consent may be withheld at the sole discretion of the City.

**12. Independent Contractor**

Consultant and its subconsultants are, and shall be at all times during the term of this Agreement, independent contractors.

**13. Notice**

13.1 All notices required by this Agreement shall be considered properly delivered when personally delivered, when received by facsimile, or on the third day following mailing, postage prepaid, certified mail, return receipt requested to:

City: City Administrator  
City of Black Diamond  
P.O. Box 599  
Black Diamond, WA 98010  
Fax: 360-886-2592

Consultant: Carol Morris  
Morris Law, P.C.  
3304 Rosedale Street NW  
Gig Harbor, WA 98335  
Phone: 253-851-5090  
Fax: 360-850-1099

**14. Disputes**

Any action for claims arising out of or relating to this Agreement shall be governed by the laws of the State of Washington. Venue shall be in King County Superior Court, Kent, Washington.

**15. Attorney Fees**

In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorney fees from the other party.

**16. General Administration and Management on Behalf of the City**

16.1 The City Administrator for the City, or his/her designee (the Contract Administrator) shall review and approve Consultant's invoices to the City under this Agreement. No third party shall have any direct control or influence over the services performed under this Agreement.

16.2 Equipment and Other Resources. The Consultant shall provide, at no cost to the City, its own cell phone, access to standard on-line computer legal research databases, long distance telephone, cell phone service, mileage, etc. The City shall provide office space to Consultant for its use while on City premises, to include a computer, a telephone, a desk, and access to a copy and fax machine.

**17. Extent of Agreement/Modification**

17.1 This Agreement, together with any attachments or addenda, represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may only be amended, modified, or added to by written instrument properly signed by both parties.

**18. Conflict of Interest; Non-Collusion**

18.1 No officer, employee or agent of the City, nor any member of the immediate family of any such officer, employee or agent, shall have any personal financial interest, direct or indirect, in this Agreement, either in fact or in appearance. The Consultant shall comply with all federal, state, and City conflict of interest laws, statutes and regulations. The Consultant represents that the Consultant presently has no interest and shall not acquire any interest, direct or indirect, in the project to which this Agreement pertains which would conflict in any manner or degree with the performance of the Consultant's services and obligations hereunder. The Consultant further covenants that in performance of this Agreement no person having any such interest shall be employed by the Consultant. The Consultant's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from any third party.

18.2 The Consultant warrants and represents that the Consultant or has not, nor has any other member, employee, representative, agent or officer of the Consultant entered into or offered to enter into any combination, collusion or agreement with any person or entity to receive or pay, and that he has not received or paid, any sum of money or other consideration for the execution of this Consultant other than the consideration offered pursuant to the terms and conditions hereof.

CITY OF BLACK DIAMOND

CONSULTANT

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

Dave Gordon

Its: Mayor

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

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

Carol Morris

Its: \_\_\_\_\_

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

Attest:

By:

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

## EXHIBIT A

### Scope of Work

#### I. Duties.

A. Carol Morris shall serve as the City Attorney.

B. The City Attorney shall be principally responsible for performing all legal work for the City, except as set forth in subsection 2(C) below. The following list of duties is illustrative of the services to be performed by the City Attorney, but is not necessarily inclusive of all duties:

1. The City Attorney shall provide services in the offices of Morris Law, P.C., 3304 Rosedale Street N.W., Suite 200, Gig Harbor, WA. The City may schedule appointments with the City Attorney as needed, either in the Morris Law office or in City Hall in Black Diamond. The City Attorney will attend City Council meetings and any other meetings specified by the City in Black Diamond. The City may ask the City Attorney to attend meetings on issues relating to City business in other locations.

2. The City Attorney shall draft City ordinances, Agreements, resolutions, interlocal agreements, correspondence and other legal documents as requested by the City;

3. The City Attorney shall represent the City in lawsuits and other contested proceedings commenced by the City;

4. The City Attorney shall represent the City in lawsuits and other contested proceedings in which the City is named as a defendant;

5. The City Attorney shall approve all ordinances and Agreements as to proper form and content;

6. The City Attorney shall advise the Mayor, Councilmembers, staff members, committee members, commission members and board members with regard to legal matters relating to their respective duties being performed for the City, or by telephone, in person and/or by written memo, on routine City business;

7. The City Attorney shall be available on an as-needed basis as directed by the Mayor or City Administrator, to discuss legal matters with citizens that affect the City and/or to respond to citizen inquiries in person, in writing or by telephone involving City business;

8. The City Attorney shall attend Council meetings;

9. The City Attorney may be asked to attend board meetings, commission meetings, committee meetings or any other type of meeting on an as-needed basis, including meetings with other governmental agencies as necessary on matters involving the City; and

10. The City Attorney shall perform such other duties as are necessary and appropriate in order to provide the City with legal representation.

C. The City Attorney's duties shall not include the following:

1. Providing public defense services for indigent defendants;
2. Providing criminal prosecution services;
3. Providing legal services associated with union negotiations, personnel or employment matters including personnel disciplinary proceedings;
4. Representing the City in any legal matter where the City Attorney is prohibited from doing so as a result of a conflict of interest under the Rules for Professional Conduct or other applicable law or regulation;
5. Providing legal services where the City has insurance coverage that provides for legal services to the City, the City has tendered the defense of the lawsuit to the insurance carrier, and the insurance carrier has assigned the lawsuit to an attorney other than the City Attorney. Provided, however, that if the insurance carrier has assigned the lawsuit to an attorney other than the City Attorney, the City Attorney may monitor the lawsuit, as requested by the City, on a case-by-case basis. The City acknowledges that the insurance carrier may retain the City Attorney to provide legal services.

# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
<b>SUBJECT:</b> <b>AB14-031</b>  <b>Resolution Adopting a General Government Facilities Mitigation Fee Plan</b>	<b>Agenda Date: March 6, 2014</b>	
	<b>AB14-031</b>	
	Mayor Dave Gordon	
	City Administrator Christy Todd	<b>X</b>
	City Attorney P. Stephen DiJulio	
	City Clerk – Brenda L. Martinez	
	Community Development – Stacey Welsh	
	Finance – May Miller	
	Economic Development – Andy Williamson	
	Parks/Natural Resources – Aaron Nix	
Cost Impact (see also Fiscal Note):	Police – Chief Kiblinger	
Fund Source:	Public Works – Seth Boettcher	
Timeline:	Court Administrator – Stephanie Metcalf	
<b>Agenda Placement:</b> <input type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input checked="" type="checkbox"/> City Administrator		
<b>Attachments: Resolution No. 14-935; General Government Facilities Mitigation Fee Plan</b>		
<b>SUMMARY STATEMENT:</b>  The City hired MAKERS to complete a study of government facilities needs, caused by the City’s approval of The Villages and Lawson Hills master planned developments. The ability to adopt a mitigation fee plan as well as a mitigation fee is contained within the development agreements approved for The Villages and Lawson Hills. If the City approves a mitigation fee, it will be a fee that is applicable to all developers in the City, for both residential and commercial development.  MAKERS presented the study to the City Council on February 27, in a Special Meeting work session.  The City Council will be considering the resolution to adopt the mitigation fee plan on March 6, March 20 and April 3, 2014.  <b>FISCAL NOTE (Finance Department):</b> No fiscal note available for the March 6 meeting due to the scheduled vacation of the City’s Finance Director. However, the mitigation fee plan and its appendices set forth the basis for the suggested fee(s).		
<b>COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:</b>		
<b>RECOMMENDED ACTION: MOTION to adopt Resolution No. 14-935, adopting a Government Facilities Mitigation Fee Plan</b>		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
March 6, 2014		

**RESOLUTION NO. 14-935**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BLACK DIAMOND, KING COUNTY, WASHINGTON TO ADOPT A  
GENERAL GOVERNMENT FACILITIES MITIGATION FEE PLAN**

**WHEREAS**, the City Council of Black Diamond adopted Ordinances 10-946 and 947 in 2010, approving two master planned developments within the City of Black Diamond; and

**WHEREAS**, the City Council of Black Diamond adopted Ordinances 11-970 and 971 in 2011, approving two master development agreements associated with the two master planned developments referenced above; and

**WHEREAS**, the development agreements each contain a reference to the City's ability to adopt a Government Facilities Mitigation Fee Plan (GFMFP); and

**WHEREAS**, the City hired MAKERS to study the City's government facilities needs and to draft a GFMFP; and

**WHEREAS**, MAKERS hired subconsultant Henderson, Young and Co. to assist it with its work on the calculation of the actual mitigation fee to be adopted;

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

**Section 1.** The City Council of Black Diamond hereby adopts the Government Facilities Mitigation Fee Plan presented by MAKERS.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT  
A REGULAR MEETING THEREOF, THIS 6<sup>TH</sup> DAY OF MARCH, 2014.**

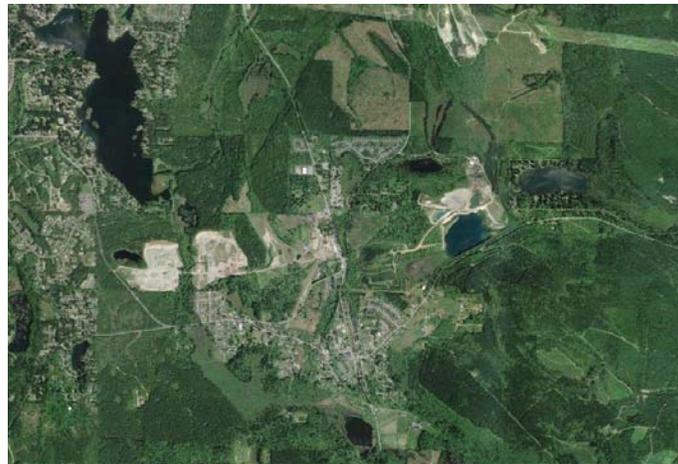
CITY OF BLACK DIAMOND:

\_\_\_\_\_  
Dave Gordon, Mayor

Attest:

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

City of Black Diamond  
*Working Draft*  
Government Facilities Plan



March 2014

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# Introduction



*Bird's eye view of Black Diamond (Google Earth)*

The City of Black Diamond has approved Master Planned Development agreements with Yarrow Bay Holdings that are projected to significantly increase the city's population from just over 4,000 today to approximately 19,200 over the next 20 years. While the City's existing Comprehensive Plan, adopted in 2009, states a 2025 population projection of 16,980 residents, a larger figure is used in this Plan to approximate 20 year population growth (to 2033) based on best available information. An increase in municipal employees and facilities will be needed to serve the future city and its residents.

The Black Diamond Government Facilities Plan is intended to help ensure the City has adequate facilities to serve its growing community. The Plan addresses City Hall, police department, municipal court, and public works facilities; it does not include the fire station, which is covered under a separate process.

The Plan has three major components:

- **Facility Program:** Identifies the government facilities needed to support Black Diamond citizens into the future.
- **Cost Estimates:** Provides planning-level estimates to construct these facilities.
- **Proposed Mitigation Fee:** Provides suggestions for the fees on new development needed to fund construction of these facilities.

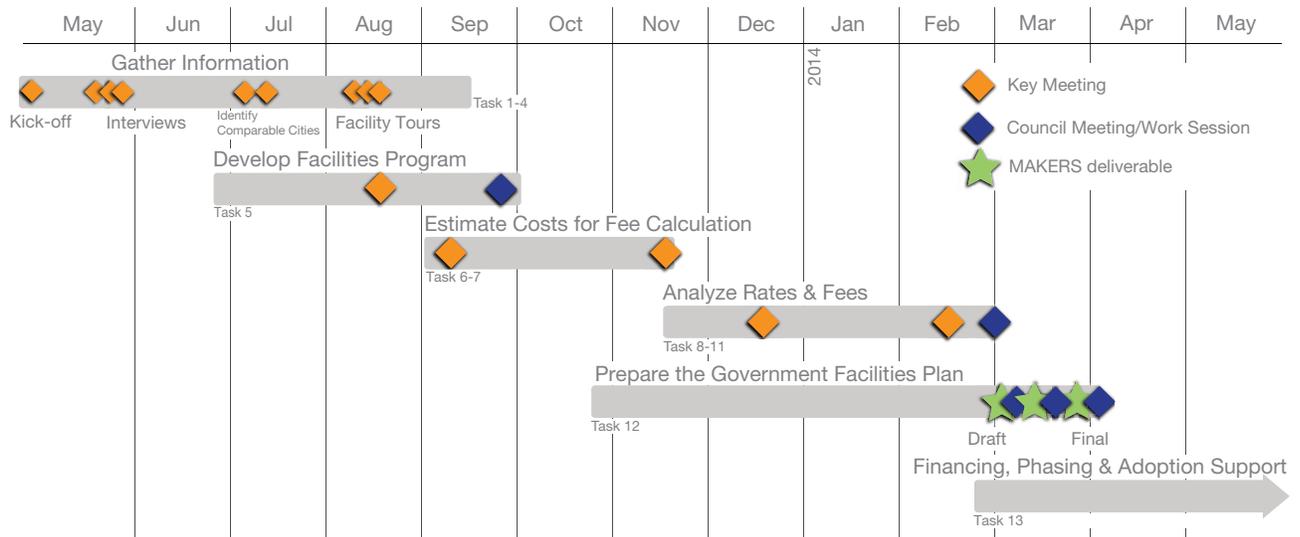
## Plan Development

The City of Black Diamond hired MAKERS architecture and urban design, LLP to lead the Government Facilities Planning effort. MAKERS was supported by Henderson, Young and Company who completed the comparable cities analysis and calculated the proposed mitigation fee and the Robinson Company who completed the cost estimate.

Development of the Plan began in April 2013 and included interviews with staff and the City Council; site visits to the City's existing facilities; tours of recently constructed state-of-the-art municipal facilities in the region; analysis of comparable cities; and progress presentations. Project updates were posted on the City's web site and a project Facebook page, and sent via emails to interested stakeholders. The schedule below summarizes the process.



The City's informational web site for the project



Project schedule and milestones

# Existing Facilities

The City of Black Diamond’s current government facilities are summarized and described below:

Existing Facilities	Address	Site Area (Acres)	Building Area (SF)
City Hall	24301 Roberts Dr.	2.57*	5,995
Police, Council chambers & Court	25510 Lawson St.	0.63	3,972
Public Works	25511 Lawson St.	1.44**	7,826

\* The City leases a portion of this acreage from a private property owner.

\*\* The Public Works site area is split between two working yards.

## City Hall

Black Diamond’s current City Hall complex is located on Roberts Drive. It is split between the ground floor of a leased facility, which contains the City Clerk, Finance, and Human Resources department, and two temporary trailers that house Community Development and Public Works administration.

## Police Department, Council Chambers, and Court Room

Black Diamond’s Police Department, Municipal Court and Council chambers are located in the former City Hall facility on Lawson Street. The Council chamber is also used as the municipal court.

## Public Works

Black Diamond’s Public Works shops, warehouse, and storage yards are located on two sites. The primary yard is located on approximately 1.2 acres of City property across from the Police Department and Council chambers. This yard contains two warehouse facilities and equipment storage areas. A supplementary yard is located on the former sewage treatment plant site and contains Black Diamond’s materials and large equipment storage.



Locations of existing government facilities



City Hall



Police Department, Council chambers and court



Public Works shops and equipment storage

## Issues Summary - City Administration

- Black Diamond's existing government facilities are generally too small to accommodate today's needs and will become increasingly more constrained as the City grows.
- Customer service counters are undersized and lack areas for break-out sessions or private conversations to serve customers with complex or sensitive issues; customers must go to four different facilities to access City services; customers requiring lengthy service congest lobby areas.
- As the City grows, added staff will compound the existing shortages in work spaces, customer interface zones, staff support areas (such as lunch rooms, etc.), and storage.
- The location of City staff and Council chambers in separate buildings and sites is inconvenient and inefficient.
- Existing facilities are not energy efficient.



*Administrative offices*



*Council chamber/court*



*Community Development and Public Works Administration trailers*



*Administrative customer service counter*

## Issues Summary - Police Station and Public Works

- Located in the former City Hall, the Police Station/Court facilities are not appropriately sized or configured to support these functions.
- The Police Station is especially space constrained. It lacks appropriate holding spaces, interview rooms, and records storage as well as evidence processing and storage areas to meet requirements. The public check-in and fingerprinting area is awkward and undersized.
- The Court administration area is undersized for the current caseload, which will grow as the City does.
- Public Works shop and storage areas are not currently sufficient and will not support future City growth. Operating two public works yards is inefficient.
- The location of the main Public Works shop and yard adjacent to residential neighborhoods is not ideal.



Police "all-hands" room



Police archival records, equipment storage and impound



Court clerk window



Court active records storage is undersized



Unconditioned garage currently used for City records archive

# Facility Program

## Comparable Cities Analysis

Every municipal government provides a different set of services, which affects their need for staff and facilities.

- Some cities provide their own police force, while others contract with county police services.
- Most municipal Public Works departments oversee streets and stormwater, while some like Black Diamond also provide water and sewer services.
- Some cities include a court, while others depend on their county’s judicial services.
- Some cities have a robust parks and recreation department while others rely on a parks district, nearby government, or the private sector.

The team selected a municipality to serve as an operational model for Black Diamond in the future by:

1. Identifying 23 Washington cities with populations within 20% of Black Diamond’s future projected population (see below).

2. Collecting data in each city around a variety of indicators, including:

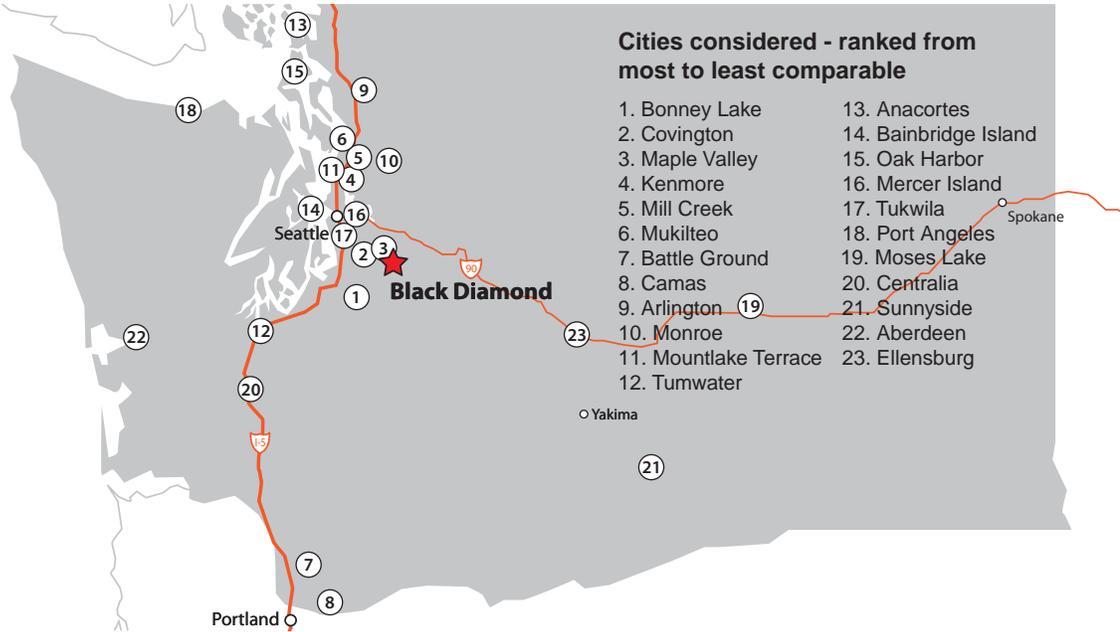
- Location
- Population, household size and density
- Employment and income
- Home value, age and ownership
- Property value
- Commute time
- Educational attainment
- Crime
- Etc.

3. Establishing thresholds of comparability for each factor.

4. Ranking cities by comparability.

5. Selecting a comparable city for the Plan.

Based on the indicators above, Bonney Lake was most comparable to Black Diamond’s projected future and generally serves as an operational model for the Plan. (For Parks and Recreation, Covington and Maple Valley are used as the model.) The detailed comparable cities analysis is located in Appendix A.



# State-of-the-Art Facilities

## Summary of Lessons Learned

To understand typical programming techniques, MAKERS, City staff, and Council representatives toured eight city halls, police stations, and public works shops and yards. A summary of take-aways for Black Diamond are included here; a short write-up of each tour is included as Appendix B.

## General

- Enhance the building design process by using an integrated design approach that includes department participation.
- Consolidate City departments to encourage collaboration, allow for efficient management, and break down department silos.



*Council chambers/auditorium at Bainbridge Island City Hall*

## City Administration

- Configure public spaces in a way that balances security with the desire for an open and accessible facility.
- Provide multi-purpose spaces, especially those that can be made available for public use.
- Do not overemphasize or over-spend on the building's entrance at the expense of other spaces that support daily functions.

## Public Works and Police Department

- Provide less space for police officer gear and more space for evidence and records.
- Include a practice shooting range for the Police Department as a valuable on-site resource; careful design consideration is essential.
- Ensure adequate and efficiently configured covered storage for Public Works is provided.



*Covered storage at Sammamish Public Works*

## Program

Black Diamond's government facilities program requirements are based on existing and projected personnel levels established through the comparable cities analysis (see table below); insights gained from staff interviews and state of the art facility tours; and space allowances derived from industry standards.

### Personnel Projections

As shown, 93 additional full-time equivalent employees (FTEs) will be needed to serve the 20-year population projection of approximately 19,200 residents.

Personnel Projections		
	FTEs Serving Existing Population	FTEs to Serve 19,200 Residents
City Hall*	19.1	55.0
Police	10.0	36.0
Public Works shop	4.0	35.0
	<b>33.1</b>	<b>126.0</b>

\* Includes Executive and City Administration; Finance; Parks and Recreation; Community Development; Public Works Administration; and Municipal Court.

While the overall number of City employees will rise significantly as the population increases, the staffing per capita is expected to decline. The City currently has approximately eight employees per 1,000 residents and expected to have just over 6.5 per 1,000 when the population reaches 19,200.

### Gap Analysis

Given existing facilities, these increases will create significant space shortfalls. As shown in the table below, existing facilities are already deficient across all departments. At present, City Hall and the police department are operating with 62% of the current facilities requirement, while the Public Works shops and storage have approximately 25% and 33% of the needed space. The projected growth in population to approximately 19,200 will require new facilities.

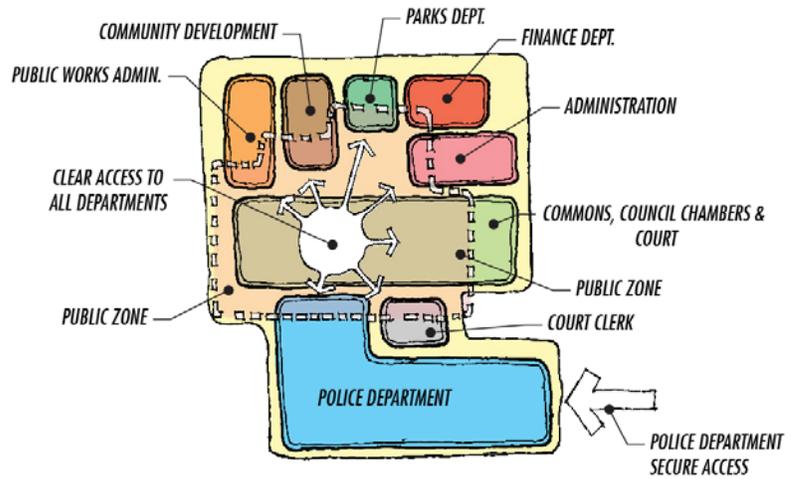
### Facility Requirements

A summary of the facility program necessary for Black Diamond's government facilities is shown at the bottom of this page. A more detailed calculation of each program component is located in Appendix C. A projected population of 19,200 residents equates to 91 employees in the City Hall/police station, necessitating a facility of just under 37,000 square feet. At the same time, the public works shop will require approximately 32,000 square feet of indoor space (i.e. shops, garages, offices) and nearly 23,000 square feet of covered outdoor storage.

Facility Requirements and Gap Analysis					
	Current Asset (SF)	Requirement to Serve Existing Population (SF)	Existing Assets as % of Requirement	Requirement to Serve 19,200 Residents (SF)	Existing Assets as % of Requirement
City Hall & Police	9,967	16,016	62%	36,793	27%
Public Works shop	3,978	15,644	25%	31,778	13%
Public Works storage	3,848	11,713	33%	22,580	17%
<b>TOTAL</b>	<b>17,793</b>	<b>43,373</b>	<b>41%</b>	<b>91,151</b>	<b>20%</b>

The diagram at right illustrates the basic components of the City Hall/police department program, including their relative sizes and designed functional adjacencies. Shared and publicly-accessible spaces are located in the center; administrative departments are clustered; and the police department is separated to maintain security requirements. The facility footprint, parking, and landscaped areas require a total site of approximately two acres.

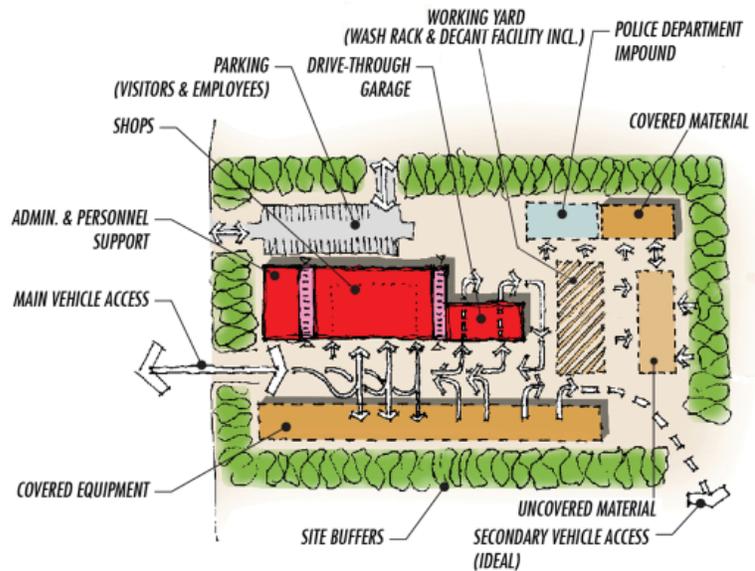
General facility placement and site considerations should optimize public access, maximize efficiency of daily operations, address water and energy use, and enable stormwater management through low impact development methods.



City Hall/Police Station functional diagram

The public works facility program includes indoor maintenance and garage spaces, support offices, covered equipment storage, covered and uncovered material storage, and a working yard with vehicle wash racks. The total site requirement for the facility, including parking and landscaped areas, is approximately 2.75 acres.

Special attention should be paid to vehicle access, critical adjacencies in the working yard, and efficient layout of the shops, drive-through-garage, offices, covered storage areas.



Public Works yard functional diagram

# Cost Estimates

The total cost for the approximately 37,000 square foot City Hall/Police Station and the 54,000 square foot Public Works shop and yard is estimated to be approximately \$48 million dollars. The estimate has three main components:

1. Land costs (approximately \$1 million) – includes an estimated cost to purchase 2.0 acres of commercial property for the City Hall/police station and 2.75 acres of industrial or light industrial property for the Public Works yard in Black Diamond. These costs are based on January 2014 assessed values and assume a normal and customary land transfer process.
2. Hard costs (approximately \$30 million) – the cost to construct the facilities, based on historical bid costs and industry standards.
3. Soft costs (approximately \$17 million) – an estimate of other costs that will be incurred in order to construct these facilities, including but not limited to taxes, design fees, studies, contingencies, permits, legal, insurance, furniture/fixtures/equipment, etc.

See Appendix D for the detailed cost estimates. This appendix also includes estimates for the 10-year population level of approximately 11,700.

## Cost Estimates (2014 Dollars)

Costs to Serve Projected  
19,200 Residents

<b>Grand Total</b>	<b>\$47,653,989</b>
--------------------	---------------------

### City Hall & Police

Land	\$ 1,000,000
Site Development	\$ 1,241,544
Administrative	\$ 4,495,150
Court/Council/Lobby	\$ 2,268,000
Police Department	\$ 5,171,950
Soft Costs, Fees, Equipment	\$ 16,782,774
	<b>\$ 30,959,418</b>

### Public Works

Land	\$ 137,500
Site Development	\$ 2,202,960
Shops	\$ 9,035,121
Covered Equipment Storage	\$1,756,724
Covered Materials Storage	\$ 350,919
Vehicle Fueling & Wash Station	\$ 1,648,647
<b>Soft Costs &amp; Equipment</b>	<b>\$ 1,562,700</b>
	<b>\$ 16,694,571</b>

Estimates are based on design/bid/build contract procurement and do not include:

- Toxic soil/hazardous materials removal
- Alternative contracting premiums
- Wetland development/mitigation
- Mine hazard premiums
- Apparatus/vehicles/firing range equipment
- Off-site work (streets/signalization/sidewalks)
- Financing costs
- Escalation

# Proposed Mitigation Fee

The final component of the Government Facilities Plan is a calculation of the proposed mitigation fee, or one-time payment by each unit of new development, to mitigate the impact of expected growth on government facilities. This fee will fund building the facilities identified in the Government Facilities Plan.

A proposed mitigation fee of approximately \$5,800 per housing unit and \$2.77 per square foot of commercial space is suggested by the studies performed to pay for the government facilities needed to support Black Diamond in the future. The steps to calculate this fee are summarized below and included in more detail in Appendix E.

## Estimate total amount of development in Black Diamond

		Housing	Commercial
Existing		3,145,090 SF	232,463 SF
New	+	12,674,750 SF	1,165,000 SF
	Subtotal =	15,819,840 SF	1,397,463 SF
<b>Total Development</b>		<b>17,217,303 SF</b>	

## Calculate the cost per square foot for government facilities

$$\frac{\text{Government Facilities Cost (per Plan)} \quad \$ 47,653,989}{\text{Total Development (from above)} \quad 17,217,303 \text{ SF}} = \text{Proposed Mitigation Fee of } \$2.77 \text{ per Square Foot of Development}$$

## Apply cost to the average size of the new housing unit

$$\text{Average Size of New Housing Unit} \quad 2,095 \text{ SF} \times \$2.77 = \text{Proposed Mitigation Fee of } \$5,803.15 \text{ per New Housing Unit}$$



**COMPARABLE CITIES*****Why use comparable cities?***

---

- Black Diamond needs a basis for estimating future government facilities.
- Method is used by Black Diamond for fiscal impact analysis.
- Method is reasonable predictor of future conditions.

**COMPARABLE CITIES*****Steps for identifying comparable cities***

---

1. Estimate build-out population
2. Identify cities  $\pm$  20% estimated population
3. Collect data for 24 comparison factors
4. Establish thresholds of comparability for each factor
5. Evaluate & score each city's comparability compared to threshold for each factor
6. Rank cities by comparability
7. Select comparable city or cities for plan

**IDENTIFYING COMPARABLE CITIES****1. Estimate build-out population**

TYPE OF HOUSING	# OF HOUSING UNITS	PERSONS PER UNIT	TOTAL PERSONS
Single Family	4,530	2.70	12,231
Multi Family	1,520	1.85	2,812
Total MPDs	6,050		15,043
Current Population			4,170
Build-out Population: current + MPDs			19,213

**IDENTIFYING COMPARABLE CITIES****2. Identify cities  $\pm$  20% estimated population**

POPULATION	TOTAL PERSONS
20% less than build-out	15,370
Build-out Population: Current + MPDs	19,213
20% more than build-out	23,056

**IDENTIFYING COMPARABLE CITIES**

**2. Identify cities ± 20% estimated population**



**IDENTIFYING COMPARABLE CITIES**

**3. Collect data for 24 comparison factors**

16 PRIMARY FACTORS

Location (west or east)	Median household income
Population	Average household income
Employment	% living in poverty
Population + 50% of employment	Property value per capita
Average household size	Type of city
Population per square mile	% commute more than 30 minutes
% owner occupied housing	% change daytime population
Median value owner housing	% workers live and work same city

## IDENTIFYING COMPARABLE CITIES

**3. Collect data for 24 comparison factors**

## 8 PRIMARY FACTORS

Median year housing built
Median age of residents
% not completed high school
Crime risk factor
Police officers/1,000 population (WA)
Police officers/1,000 population (BD)
Cost of living index
% unemployment

## IDENTIFYING COMPARABLE CITIES

**4. Establish thresholds of comparability for each factor**

## COMPARABILITY

Similar
Slightly different
Notably different
Very different

IDENTIFYING COMPARABLE CITIES

4. Example of thresholds of comparability

- Example: % Commute more than 30 minutes
- Relevance: high % making long commute = less daytime services compared to low % long commute
- Black Diamond currently @ 72% (which is higher than any of the 23 comparable cities)

IDENTIFYING COMPARABLE CITIES

4. Example of thresholds of comparability

BASELINE DATA	PERCENT TRAVEL TIME 30+ MIN
Black Diamond current	72%
Black Diamond buildout	not forecast
Average of 23 cities	39%

CITY NAME	PERCENT TRAVEL TIME 30+ MIN
Maple Valley	70%
Monroe	62%
Covington	61%
Bainbridge Island	61%
Bonney Lake	56%
Mill Creek	55%
Kenmore	51%
Arlington	50%
Battle Ground	50%

CITY NAME	PERCENT TRAVEL TIME 30+ MIN
Mountlake Terrace	48%
Mukilteo	45%
Tukwila	38%
Camas	32%
Anacortes	31%
Mercer Island	28%
Centralia	24%
Tumwater	23%
Sunnyside	23%
Oak Harbor	23%
Aberdeen	21%
Ellensburg	18%
Port Angeles	18%
Moses Lake	14%

## IDENTIFYING COMPARABLE CITIES

## 5. Evaluate & score each city's comparability compared to threshold for each factor

COMPARABILITY	PRIMARY FACTOR	SECONDARY FACTOR
Similar	10	3
Slightly different	6	2
Notably different	2	1
Very different	0	0

## IDENTIFYING COMPARABLE CITIES

## 6. Rank cities by comparability

RANK	SCORE (184 POSSIBLE)	CITY NAME	RANK	SCORE (184 POSSIBLE)	CITY NAME	RANK	SCORE (184 POSSIBLE)	CITY NAME
1	184	Bonney Lake	9	157	Arlington	14	124	Bainbridge Island
2	179	Covington	10	156	Monroe	15	123	Oak Harbor
3	177	Maple Valley	11	147	Mountlake Terrace	16	122	Mercer Island
4	174	Kenmore	12	146	Tumwater	17	108	Tukwila
5	170	Mill Creek	13	144	Anacortes	18	97	Port Angeles
6	165	Mukilteo				19	90	Moses Lake
7	164	Battle Ground				20	88	Centralia
8	163	Camas				21	86	Sunnyside
						22	83	Aberdeen

Comparable Cities for Black Diamond Government Facilities Plan

Compare	Compare	Location	Location	Location	Type of City	Pop + Emp
Rank	Score (184 = comparable on all factors)	City Name	County	Western or Eastern Washington	AWC 2009 State of the Cities "cluster" designation	Population [2012]
		Source-->>	4	4	2	7
<b>Baseline Data</b>						
		Black Diamond current	King	West	residential	4,170
		Black Diamond buildout	King	West	residential	19,213
		Average of 23 cities				19,175
<b>Comparison Benchmarks and Thresholds</b>						
		Benchmark	none	East	Residential, Urban Outskirts or Mixed Resources	15,300 - 23,400
		Slightly different		East		
		Notably different		none		
		Very different		none		
<b>Most Comparable</b>						
1	184	Bonney Lake	Pierce	West	residential	17,730
2	179	Covington	King	West	residential	17,760
3	177	Maple Valley	King	West	residential	23,340
4	174	Kenmore	King	West	residential	21,020
5	170	Mill Creek	Snohomish	West	residential	18,450
6	165	Mukilteo	Snohomish	West	residential	20,360
7	164	Battle Ground	Clark	West	urban outskirts	17,920
8	163	Camas	Clark	West	residential	20,020
<b>Somewhat Comparable</b>						
9	157	Arlington	Snohomish	West	mixed resources	17,970
10	156	Monroe	Snohomish	West	small commercial center	17,390
11	147	Mountlake Terrace	Snohomish	West	residential	20,090
12	146	Tumwater	Thurston	West	mixed resources	17,900
13	144	Anacortes	Skagit	West	regional center	15,960
<b>Least Comparable</b>						
14	124	Bainbridge Island	Kitsap	West	residential	23,090
15	123	Oak Harbor	Island	West	medium commercial center	22,200
16	122	Mercer Island	King	West	residential	22,690
17	108	Tukwila	King	West	major commercial center	19,080
18	97	Port Angeles	Clallam	West	regional center	19,100
19	90	Moses Lake	Grant	East	regional center	20,950
20	88	Centralia	Lewis	West	regional center	16,670
21	86	Sunnyside	Yakima	East	urban outskirts	16,130
22	83	Aberdeen	Grays Harbor	West	rural commercial center	16,890
23	79	Ellensburg	Kittitas	East	regional center	18,320

Comparable Cities for Black Diamond Government Facilities Plan

Location	Pop + Emp	Pop + Emp	Housing	Housing	Income
City Name	Total Employment [2010]	Population + 50% of Employment [2012+2010]	Owner Occupied Units (WA = 62%) [2010]	Median Value Owner Housing (WA = 254,506) [2010]	Median Household Income (WA = 60,070) [2010]
Source-->>	13	14	6	6	6
Black Diamond current	455	4,397	86%	339,461	82,478
Black Diamond buildout	2,347	20,387	85%	298,492	not forecast
Average of 23 cities	8,251	23,436	66%	273,950	66,156
<b>Goals and Thresholds</b>					
Benchmark	BD buildout (2,347)		70%	BD buildout (\$298,492)	BD current (\$82,478)
Slightly different	>3x		60-69%	0.55 - 0.66x	0.55 - 0.66x
Notably different	>4.5x		50-59%	0.50 - 0.55x	0.50 - 0.55x
Very different	>15x		< 50%	<0.50x or >1.5x	<0.50x or >1.1x
<b>Other Cities</b>					
Bonney Lake	3,262	19,361	85%	273,451	84,576
Covington	5,840	20,680	90%	247,460	80,133
Maple Valley	3,995	25,338	87%	286,917	86,596
Kenmore	3,737	22,889	71%	390,325	82,834
Mill Creek	7,455	18,521	68%	377,193	88,612
Mukilteo	8,577	24,649	64%	381,675	87,727
Battle Ground	5,907	20,874	76%	198,619	59,875
Camas	6,626	23,333	78%	295,909	76,481
<b>Other Cities</b>					
Arlington	10,815	23,377	65%	239,808	65,674
Monroe	7,687	21,233	69%	249,814	71,588
Mountlake Terrace	7,142	23,661	58%	223,743	64,195
Tumwater	5,042	20,421	56%	214,143	64,532
Anacortes	7,938	19,929	71%	344,892	60,023
<b>Other Cities</b>					
Bainbridge Island	6,122	26,151	75%	519,096	97,936
Oak Harbor	6,888	25,644	49%	195,924	49,678
Mercer Island	7,899	26,640	77%	707,345	113,700
Tukwila	35,803	36,982	45%	216,575	52,298
Port Angeles	11,753	24,977	59%	170,534	44,991
Moses Lake	12,721	27,311	65%	161,572	45,275
Centralia	8,949	21,144	61%	162,919	37,564
Sunnyside	5,977	19,119	61%	121,740	38,739
Aberdeen	8,216	20,998	62%	133,294	39,832
Ellensburg	7,635	22,138	42%	187,907	28,729

Comparable Cities for Black Diamond Government Facilities Plan

Location	Income	Income	Income	Commute	Economy
City Name	Average Household Income (WA = 76,388) [2010]	Percent of Population Living in Poverty [2009]	Property Valuation per Capita [2009]	Travel Time 30+ min (WA = 39%) [2010]	Daytime Population Change due to Commuting
Source-->>	6	5	15	6	5
Black Diamond current	96,974	1%	153,874	72%	not available
Black Diamond buildout	not forecast	not forecast	129,410	not forecast	not forecast
Average of 23 cities	82,677	12%	155,649	39%	6%
<b>Standards and Thresholds</b>					
Benchmark	BD current (\$96,974)	median of 23 cities (9.5%)	average of 23 cities (\$155,649)	BD current (72%)	0%
Slightly different	0.55 - 0.66x	10-12%	0.6-0.75x or 1.3-1.7x	0.51 - 0.67x	single digit positive %
Notably different	0.50 - 0.55x	13-19%	0.5-0.6x or 1.8-2.8x	0.34 - 0.50x	double digit positive %
Very different	<0.50x or >1.4x	>20%	<0.5x or >2.9x	<0.33x	triple digit positive %
<b>Comparison Cities</b>					
Bonney Lake	91,497	5%	145,076	56%	-25%
Covington	89,133	4%	120,520	61%	-31%
Maple Valley	99,555	3%	123,744	70%	-29%
Kenmore	110,900	9%	163,650	51%	-29%
Mill Creek	113,724	6%	175,495	55%	-18%
Mukilteo	102,567	4%	207,107	45%	-18%
Battle Ground	66,034	10%	87,867	50%	-7%
Camas	90,705	5%	185,776	32%	11%
<b>Other Cities</b>					
Arlington	70,902	10%	134,475	50%	35%
Monroe	79,866	9%	120,361	62%	15%
Mountlake Terrace	72,365	10%	114,655	48%	-20%
Tumwater	79,524	12%	147,963	23%	44%
Anacortes	78,648	7%	180,158	31%	6%
<b>Additional Cities</b>					
Bainbridge Island	137,871	6%	292,648	61%	-11%
Oak Harbor	60,549	9%	81,250	23%	4%
Mercer Island	180,140	4%	453,800	28%	-13%
Tukwila	66,077	24%	284,849	38%	136%
Port Angeles	55,633	18%	103,544	18%	14%
Moses Lake	56,820	17%	94,017	14%	17%
Centralia	51,835	22%	67,872	24%	15%
Sunnyside	49,968	28%	39,907	23%	7%
Aberdeen	51,206	20%	50,129	21%	19%
Ellensburg	46,045	41%	71,126	18%	14%

Comparable Cities for Black Diamond Government Facilities Plan

Location	Economy	Density	Density	Housing	Age
City Name	Workers Who Live and Work in Same City	Average Household Size (WA avg = 2.5) [2012]	Population per Sq. Mile [2012]	Median Year Housing Built ( WA = 1981) [2010]	Median Resident Age (WA = 34.6) [2010]
<b>Source--&gt;&gt;</b>	<b>5</b>	<b>9</b>	<b>12</b>	<b>6</b>	<b>6</b>
Black Diamond current	not available	2.47	576	97	35.7
Black Diamond buildout	not forecast	2.48	2,641	15	not forecast
Average of 23 cities	33%	2.50	2,424	83	34.3
<b>Is and Thresholds</b>					
Benchmark	median of 23 cities (27%)	BD buildout (2.48)	mid-point of 23-city average and BD Buildout (2,533)	1980	average of 23 cities (34.5 years old)
Slightly different	1.5 - 2.0x	none	0.3-0.5x	none	< 0.8x or > 1.2x
Notably different	2.0 - 2.6x	>1.3x	> 2.0x	pre 1980	none
Very different	>2.7x	none	<0.3x	pre 1960	none
<b>Bonney Lake</b>					
Bonney Lake	11%	2.72	1,925	93	32.8
Covington	11%	2.89	2,711	88	31.2
Maple Valley	14%	2.83	3,990	98	31.8
Kenmore	11%	2.41	3,446	82	37.8
Mill Creek	13%	2.30	3,884	94	35.6
Mukilteo	15%	2.37	3,316	95	34.6
Battle Ground	17%	2.95	2,520	96	28.9
Camas	27%	2.73	1,347	98	32.6
<b>Arlington</b>					
Arlington	28%	2.59	1,523	97	30.9
Monroe	28%	3.25	3,078	96	30.0
Mountlake Terrace	9%	2.31	5,048	68	31.8
Tumwater	22%	2.16	1,162	85	37.0
Anacortes	59%	2.05	1,213	82	45.3
<b>Bainbridge Island</b>					
Bainbridge Island	43%	2.17	720	86	44.1
Oak Harbor	49%	2.31	2,329	78	27.1
Mercer Island	22%	2.29	3,660	68	46.6
Tukwila	17%	2.47	2,078	68	32.7
Port Angeles	73%	2.05	1,828	67	39.9
Moses Lake	59%	2.42	1,177	86	34.3
Centralia	45%	2.25	2,238	71	35.4
Sunnyside	40%	3.49	2,589	71	27.9
Aberdeen	60%	2.30	1,398	54	36.1
Ellensburg	76%	2.29	2,573	78	24.4

Comparable Cities for Black Diamond Government Facilities Plan

Location	Education	Economy	Economy	Crime
City Name	Education: Not Complete H.S. (WA=9.88) [2010]	Cost of Living (US = 100) [Mar 2012]	Unemployment % (WA = 8.5%) [Aug 2012]	Crime Risk Factor (US = 100, WA = 128) {200 = dbl US; 50 = 1/2} [2010]
Source-->>	6	5	5	6
Black Diamond current	10%	111.5	7.4%	90
Black Diamond buildout	not forecast	not forecast	not forecast	not forecast
Average of 23 cities	10%	104.0	9.0%	106
<b>Standards and Thresholds</b>				
Benchmark	average of 23 cities (10%)	median of 23 cities (109.2)	median of 23 cities (8.5%)	mid-point of 23-city median and BD current (94)
Slightly different	1.5 - 3.9x	none	none	1.3 - 1.5x
Notably different	<0.25x	0.91-0.95x or 1.05-1.09x	1.15 - 1.5x	1.5 - 2.0x
Very different	<4.0x	<0.9x or >1.1x	>1.5x	>2.1x
<b>Other Cities</b>				
Bonney Lake	7%	109.1	9.4%	118
Covington	7%	111.6	7.4%	96
Maple Valley	7%	110.7	7.4%	123
Kenmore	5%	113.1	7.4%	97
Mill Creek	4%	113.5	8.3%	48
Mukilteo	3%	112.6	8.3%	64
Battle Ground	10%	100.6	9.6%	98
Camas	5%	100.0	9.6%	122
<b>Other Cities</b>				
Arlington	10%	111.6	8.3%	62
Monroe	9%	112.0	8.3%	68
Mountlake Terrace	7%	113.1	8.3%	76
Tumwater	4%	107.4	8.2%	138
Anacortes	8%	101.2	9.3%	34
<b>Other Cities</b>				
Bainbridge Island	2%	104.7	9.6%	91
Oak Harbor	7%	109.2	8.5%	53
Mercer Island	2%	118.5	7.4%	35
Tukwila	14%	111.9	7.4%	426
Port Angeles	12%	87.7	10.0%	27
Moses Lake	16%	83.6	9.1%	65
Centralia	17%	87.1	12.8%	144
Sunnyside	44%	93.7	10.0%	168
Aberdeen	15%	85.1	12.8%	183
Ellensburg	10%	93.2	8.9%	109

Comparable Cities for Black Diamond Government Facilities Plan

Location	Crime	Crime
City Name	Police Officers per 1,000 population (WA avg = 1.51) [2011] 23 city avg = benchmark	Police Officers per 1,000 population (WA avg = 1.51) [2011] BD = benchmark
Source-->>	5	5
Black Diamond current	2.13	2.13
Black Diamond buildout	not forecast	not forecast
Average of 23 cities	1.47	1.47
<b>Standards and Thresholds</b>		
Benchmark	average of 23 cities (1.47)	BD now (2.13)
Slightly different	0.65- 0.70 or 0.90 - 0.95x	0.65- 0.70 or 0.90 - 0.95x
Notably different	0.51-0.65 or 1.3-2.2x	0.51-0.65 or 1.3-2.2x
Very different	<0.5x or >2.3x	<0.5x or >2.3x
Bonney Lake	1.53	1.53
Covington	0.95	0.95
Maple Valley	0.74	0.74
Kenmore	0.72	0.72
Mill Creek	1.24	1.24
Mukilteo	1.36	1.36
Battle Ground	1.18	1.18
Camas	1.17	1.17
Arlington	1.32	1.32
Monroe	1.76	1.76
Mountlake Terrace	1.38	1.38
Tumwater	1.36	1.36
Anacortes	1.50	1.50
Bainbridge Island	0.90	0.90
Oak Harbor	1.20	1.20
Mercer Island	1.34	1.34
Tukwila	3.45	3.45
Port Angeles	1.65	1.65
Moses Lake	1.64	1.64
Centralia	1.99	1.99
Sunnyside	1.92	1.92
Aberdeen	2.04	2.04
Ellensburg	1.46	1.46

# Appendix B: State-of-the-Art Facilities

## Sammamish Public Works

Size: 19,000 SF on two floors  
Completion Date: 2011

The City of Sammamish Public Works department is focused on street maintenance, right-of-way improvements and storm sewer maintenance. Unlike the City of Black Diamond, Sammamish does not provide its own municipal drinking water and sanitary sewer services. The facility, which is located in a low-density residential neighborhood, also includes an emergency operations center.



*Sammamish Public Works*



## Poulsbo City Hall

Size: 30,000 SF on three floors  
Completion Date: 2010

Poulsbo City Hall provides a strong civic presence near the center of downtown. It includes a grand central space, well-designed council chambers, and abundant access to natural light across the open-floor plan office. The building includes the Police Department which occupies a space originally designed and intended for court uses (a funding effort for a separate police facility failed). As a result, the facility is not properly designed for prisoner transfers, records and equipment storage, evidence processing, and prisoner holdings.



### Snoqualmie Public Works

Snoqualmie Public Works has administrative office space collocated with a working yard, shops and garage. The office area is generally oversized for the use. The site's location makes the working yard functionality and access constrained. Shops to support sewer services are isolated and inconveniently located.



### Snoqualmie Police Department

The City of Snoqualmie Police Department facility is undersized, particularly with service expansions to North Bend that will increase space shortfalls. The Police Department has a 24-hour vestibule that allows the public unrestricted access to services without needing personnel occupying a service counter around the clock. Small meeting rooms near the front lobby allow for the public to have informal meetings with officers. An on-site shooting range provides for all-hours practice and fire-arm qualification testing.



### Issaquah Police Department

The Police Department occupies the majority of the main level (with the exception of shared lobby and council chambers), and all of the lower level (City Hall is located on the upper floor). Generally, the facility is thoughtfully designed and provides a good level of functionality for the necessary services provided.

Beyond prisoner holding and interview rooms, the lower level of the facility contains a firing range. Design peculiarities create some problems with regular maintenance; however, the in-house range provides an efficient tool for meeting qualification and training requirements.

Over time, the department has noticed a decrease in storage needs for officer gear, especially with improvements in report filing methods, but increasing needs for evidence handling, processing and records storage.



### Bainbridge Island City Hall

Size: 24,000 SF on two floors  
Completion Date: 2000

Bainbridge Island City Hall contains Executive, Legislative, Finance and Administration, Planning & Community Development, and Public Works departments. The facility provides a good example of how to construct a context-sensitive civic building in an area dominated by residential-scale development. The building has a long and open central space that is pleasant but creates some issues related to security and customer flow. The facility also highlights how “1% for Art” projects should be implemented under careful consideration, particularly with regard to future building uses and flexibility.



### Gig Harbor City Hall

Size: 35,053 SF on two floors  
Completion Date: 2002

Gig Harbor City Hall has both positive and negative design aspects. There is a grand central space, but orientation is confusing for visitors. It is not always clear where departments are located within the facility. At the same time, the facility offers a multi-purpose community meeting room and a purpose-built police department. Other than its configuration, the facility also has key details that required attention after construction, such as HVAC and lighting and the degree of staff control over both.



### North Bend Public Works

Size: 12,500 SF  
Completion Date: 2002

North Bend’s Public Works facility offers generous administrative spaces that are collocated with a well organized working yard, garage and shops. Smaller hybrid spaces combining shops and offices were meant to be used as a “headquarters” for each division, but are predominantly used as office space only, diverging from the building’s initial conceptual design.



# Appendix C: Facility Program

## Summary

	Requirement to Serve Current Population	Requirement to Serve 11,700 Residents (SF)	Requirement to Serve 19,200 Residents (SF)
<b>Administrative &amp; Police Departments</b>			
Executive & Administration	1,662	1,983	2,256
Finance	832	1,432	1,648
Community Development	861	1,616	1,832
Public Works Admin	1,162	1,929	2,259
Parks & Recreation	197	826	934
Municipal Court	717	1,127	1,268
Common Areas	5,549	10,760	11,819
Police Department	5,035	12,151	14,777
<b>Total Building Area (GSF)</b>	<b>16,016</b>	<b>31,825</b>	<b>36,793</b>
Building Footprint <sup>1</sup>	10,570	21,174	24,453
Parking and Outdoor Storage	15,527	29,891	41,636
<b>Subtotal</b>	<b>26,097</b>	<b>51,065</b>	<b>66,089</b>
<b>Landscape Areas/Buffers (35%)</b>	<b>9,181</b>	<b>17,872</b>	<b>23,131</b>
<b>Site Area Total (SF)</b>	<b>35,411</b>	<b>68,937</b>	<b>89,219</b>
<b>Site Area Total (Acres rounded)</b>			<b>2.00</b>

Note: <sup>1</sup> 66% of Total Building Area; based on two-story construction.

	Requirement to Serve Current Population	Requirement to Serve 11,700 Residents (SF)	Requirement to Serve 19,200 Residents (SF)
<b>Public Works</b>			
Indoor Spaces	15,644	26,999	31,778
Covered Storage (Non-heated)	11,713	19,610	22,580
Outdoor Storage	8,566	12,636	19,836
Parking	2,280	8,310	12,150
Landscape Areas & Buffers	13,371	23,644	30,221
<b>Site Area Total (SF)</b>	<b>51,575</b>	<b>91,200</b>	<b>116,566</b>
<b>Site Area Total (Acres rounded)</b>	<b>1.18</b>	<b>2.75</b>	<b>2.75</b>

## Total

<b>Site Area Grand Total (SF)</b>	<b>86,986</b>	<b>160,136</b>	<b>205,784</b>
<b>Site Area Grand Total (Acres rounded)</b>			<b>4.75</b>

## Administrative & Police Department | Executive and City Administration

	Space/Use Required to Serve:				Area Required to Serve:				
	Existing Population	11,700 Residents	19,000 Residents		Standard (NSF)	=	Existing Population	11,700 Residents	19,200 Residents
Mayor	1	1	1	@	220	=	220	220	220
City Administrator	1	1	1	@	220	=	220	220	220
City Attorney	1	1	1	@	180	=	180	180	180
HR Manager	0	0.5	1	@	180	=	0	90	180
Asst. City Administrator/City Clerk	1	1	1	@	100		100	100	100
Deputy City Clerk/Records Info Specialist	1	1	1	@	80	=	80	80	80
Admin. Specialist II	1	1	2	@	80	=	80	80	160
IS Manager	1	1	1	@	80	=	80	80	80
Executive Assistant	0	0.5	1	@	80	=	0	80	80
IT Technician	0	0.5	1	@	64	=	0	32	64
Mayor reception area	1	1	1	@	150	=	150	150	150
IT work / equipment storage area	1	1	1	@	80	=	80	80	80
Customer counter	1	1	1	@	50	=	50	50	50
Active storage	3	6	6	@	12	=	36	72	72
High density files	1	1	1	@	45	=	45	45	45
Departmental work area	1	1	1	@	60	=	60	60	60
<b>Subtotal</b>							<b>1,381</b>	<b>1,619</b>	<b>1,821</b>
<b>Net-to-Gross Factor (35%)</b>							<b>1.35</b>	<b>1.35</b>	<b>1.35</b>
<b>Total (SF)</b>							<b>1,864</b>	<b>2,186</b>	<b>2,458</b>

## Administrative & Police Department | Finance

Finance Director (CFO)	1	1	1	@	220	=	220	220	220
Deputy Finance Director (Fin. Ops Supv.)	1	1	1	@	180	=	180	180	180
Senior Accountant	0.75	1	1	@	100	=	75	100	100
Accounting Specialist III	0	0.5	1	@	80	=	0	80	80
Accounting Specialist II	0	1	2	@	80	=	0	80	160
Accounting Specialist I	0	1.5	3	@	80	=	0	160	240
Accountant	0	0.5	1	@	64	=	0	64	64
Active Storage	3	6	6	@	12	=	36	72	72
High density files	1	1	1	@	45	=	45	45	45
Departmental Work Area	1	1	1	@	60	=	60	60	60
<b>Subtotal</b>							<b>616</b>	<b>1,061</b>	<b>1,221</b>
<b>Net-to-Gross Factor (35%)</b>							<b>1.35</b>	<b>1.35</b>	<b>1.35</b>
<b>Total (GSF)</b>							<b>832</b>	<b>1,432</b>	<b>1,648</b>

## Administrative & Police Department | Community Development

	Space/Use Required to Serve:				Area Required to Serve:				
	Existing Population	11,700 Residents	19,000 Residents		Standard (NSF)	Existing Population	11,700 Residents	19,200 Residents	
Director	1	1	1	@	220 =	220	220	220	
Senior Planner/Ntl Resources	0.5	1	1	@	100 =	50	100	100	
Permit Center Supervisor/Coordinator	1	1	1	@	100 =	100	100	100	
Building Official/ (Dev Review Eng)	0.15	1	1	@	100 =	15	100	100	
Building Inspector	0.15	1	1	@	80 =	12	80	80	
Associate Planner	0	1	1	@	80 =	0	80	80	
Plans Examiner	0	0	1	@	80 =	0	0	80	
Permit Technician	0	1	1	@	80 =	0	80	80	
Code Enforcement Officer	0	1	1	@	80 =	0	80	80	
GIS Analyst	0	1	2	@	80 =	0	80	160	
Customer counter	1	1	1	@	100 =	100	100	100	
Active storage	3	6	6	@	12 =	36	72	72	
High density files	1	1	1	@	45 =	45	45	45	
Departmental work area	1	1	1	@	60 =	60	60	60	
<b>Subtotal</b>						<b>638</b>	<b>1,197</b>	<b>1,357</b>	
<b>Net-to-Gross Factor (35%)</b>						<b>1.35</b>	<b>1.35</b>	<b>1.35</b>	
<b>Total (SF)</b>						<b>861</b>	<b>1,616</b>	<b>1,832</b>	

## Administrative & Police Department | Parks and Recreation

Parks Director	0.5	1	1	@	220 =	110	220	220
Parks Asst. Director	0	1	1	@	80 =	0	80	80
Admin. Assistant	0	0	1	@	80 =	0	0	80
Recreation Programmer	0	0.5	1	@	80 =	0	80	80
Special Events Coordinator	0	1	1	@	100 =	0	100	100
Active Storage	3	6	6	@	12 =	36	72	72
Departmental Work Area	0	1	1	@	60 =	0	60	60
<b>Subtotal</b>						<b>146</b>	<b>612</b>	<b>692</b>
<b>Net-to-Gross Factor (35%)</b>						<b>1.35</b>	<b>1.35</b>	<b>1.35</b>
<b>Total (SF)</b>						<b>197</b>	<b>826</b>	<b>934</b>

## Administrative & Police Department | Public Works Administration

	Space/Use Required to Serve:					Area Required to Serve:			
	Existing Population	11,700 Residents	19,000 Residents		Standard (NSF)	Existing Population	11,700 Residents	19,200 Residents	
City Engineer/Econ Dev Director	1	1	1	@	220 =	220	220	220	
Public Works Director	1	1	1	@	220 =	220	220	220	
Assistant Public Works Director	0		1	@	180 =	-	-	180	
Asst. City Engineer	0	1	1	@	180 =	-	180	180	
Facility Coordinator	1	1	1	@	100 =	100	100	100	
Project manager	0	1	1	@	80 =	-	80	80	
Support Services Coordinator	0	1	1	@	80 =	-	80	80	
Transportation Supervisor	0	1	1	@	80 =	-	80	80	
Custodian	0	1	1	@	64 =	-	64	64	
Administrative Assistant	1	0	0	@	80 =	80	-	-	
Admin. Specialist/ GIS tech.	0	2	3	@	64 =	-	128	192	
Customer counter	1	1	1	@	100 =	100	100	100	
Active Storage	3	6	6	@	12 =	36	72	72	
High density files	1	1	1	@	45 =	45	45	45	
Departmental Work Area	1	1	1	@	60 =	60	60	60	
<b>Subtotal</b>						<b>861</b>	<b>1,429</b>	<b>1,673</b>	
<b>Net-to-Gross Factor (35%)</b>						<b>1.35</b>	<b>1.35</b>	<b>1.35</b>	
<b>Total (SF)</b>						<b>1,162</b>	<b>1,929</b>	<b>2,259</b>	

## Administrative & Police Department | Municipal Court

Municipal Court Judge	1	1	1	@	220 =	220	220	220
Court Administrator	1	1	1	@	180 =	180	180	180
Court Clerk II	0	0.5	1	@	80 =	0	80	120
Court Clerk I	0	1.5	3	@	64 =	0	128	192
Small meeting area (nook) (1-4 people)	0	1	1	@	40 =	0	40	40
Medium Capacity (5-10 people)	0	0	0	@	216 =	0	0	0
Large Capacity (16-20 people)	0	0	0	@	453 =	0	0	0
Customer counter	1	1	1	@	50 =	50	50	50
Active storage	3	6	6	@	12 =	36	72	72
High density files	1	1	1	@	45 =	45	45	45
Departmental work Area	0	1	1	@	60 =	0	60	60
<b>Subtotal</b>						<b>531</b>	<b>875</b>	<b>979</b>
<b>Net-to-Gross Factor (35%)</b>						<b>1.35</b>	<b>1.35</b>	<b>1.35</b>
<b>Total (SF)</b>						<b>717</b>	<b>1,181</b>	<b>1,322</b>

## Administrative & Police Department | Police

	Space/Use Required to Serve:				Area Required to Serve:				
	Existing Population	11,700 Residents	19,000 Residents		Standard (NSF)	Existing Population	11,700 Residents	19,200 Residents	
<b>Personnel</b>									
Police Chief	1	1	1	@	220 =	220	220	220	
Administrative Assistant	0	1	1	@	100 =	-	100	100	
Assistant Chief (Operations)	1	1	1	@	180 =	180	180	180	
Assistant Chief (Administrative)	0	1	1	@	180 =	-	180	180	
Sergeant (Patrol & Detective)	2	2	4	@	100 =	200	200	400	
Patrol Officer	4	8	15	@	45 =	60	120	225	
School Resource Officer	0	1	1	@	80 =	-	80	80	
Detective	0	2	3	@	80 =	-	160	240	
Community Service Officer	0	2	4	@	80 =	-	160	320	
Special Projects/Public Service	0	1	1	@	80 =	-	80	80	
Records Manager	1	1	1	@	100 =	100	100	100	
Records Clerk	1	1	2	@	80 =	80	80	160	
Property Custodian	0	1	1	@	80 =	-	80	80	
<b>Subtotal (NSF)</b>						<b>840</b>	<b>1,740</b>	<b>2,365</b>	

<b>Meeting/Conference Spaces</b>									
Small meeting area (nook) (1-4 people)	0	1	1	@	40 =	-	40	40	
Medium meeting area (5-10 people)	1	1	1	@	216 =	216	216	216	
Large Capacity (16-20 people) - Shared with EOC									
<b>Subtotal (NSF)</b>						<b>216</b>	<b>256</b>	<b>256</b>	

<b>Operational Space</b>									
Interview rooms	1	2	3	@	80 =	80	160	240	
Holding cell	3	3	3	@	70 =	210	210	210	
Holding restroom	1	1	1	@	75 =	75	75	75	
BAC room	1	1	1	@	75 =	75	75	75	
Prisoner processing	0.5	1	1	@	200 =	100	200	200	
Armory	0.5	1	1	@	200 =	100	200	200	
Quiet room	0	1	1	@	100 =	-	100	100	
Mud room	0	1	2	@	75 =	-	75	150	
<b>Subtotal (NSF)</b>						<b>640</b>	<b>1,095</b>	<b>1,250</b>	

	Space/Use Required to Serve:					Area Required to Serve:			
	Existing Population	11,700 Residents	19,200 Residents		Standard (NSF)	Existing Population	11,700 Residents	19,200 Residents	
<b>Departmental Support Space</b>									
Secure records room	0.5	1	2	@	100 =	50	100	200	
Lobby w/service counter	0.5	1	1	@	425 =	213	425	425	
Fingerprinting	1	1	1	@	75 =	75	75	75	
Lunch room/coffee/break room	0.5	1	1	@	350 =	175	350	350	
Copy/mail room/production room	1	1	2	@	125 =	125	125	250	
Computer room	1	1	1	@	108 =	108	108	108	
Library (optional)	0	0	1	@	80 =	-	-	80	
Firing Range	0	1	1	@	2500 =	-	2,500	2,500	
Restrooms (M/F)	0.5	1	1	@	300 =	150	300	300	
Lockers (M/F)	12	24	48	@	15 =	180	360	720	
Showers (M/F)	0.5	1	1	@	175 =	88	175	175	
Fitness room (optional)	0	1	1	@	125 =	-	125	125	
Active Storage	3	6	6	@	12 =	36	72	72	
High density files	1	1	1	@	45 =	45	45	45	
Departmental Work Area	1	1	1	@	60 =	60	60	60	
<b>Subtotal (NSF)</b>						<b>1,304</b>	<b>4,820</b>	<b>5,485</b>	
<b>Evidence Support Space</b>									
Evidence transfer	1	1	1	@	65 =	65	65	65	
Evidence processing area	1	1	1	@	60 =	60	60	60	
Handsink/eyewash	1	1	1	@	15 =	15	15	15	
Evidence lockers	0.75	1	1	@	100 =	75	100	100	
Freezer	1	1	1	@	25 =	25	25	25	
Refrigerator	1	1	1	@	25 =	25	25	25	
Drying area	1	1	1	@	50 =	50	50	50	
Fume hood	1	1	1	@	30 =	30	30	30	
Super glue/dusting station	1	1	1	@	50 =	50	50	50	
Evidence storage	1	2	4	@	250 =	250	500	1,000	
Narcotics storage	0.5	1	1	@	120 =	60	120	120	
Firearms storage	0.5	1	1	@	50 =	25	50	50	
<b>Subtotal (NSF)</b>						<b>730</b>	<b>1,090</b>	<b>1,590</b>	
<b>Total</b>						<b>3,730</b>	<b>9,001</b>	<b>10,946</b>	
<b>Net-to-Gross Factor (35%)</b>						<b>1.35</b>	<b>1.35</b>	<b>1.35</b>	
<b>Grand Total (GSF)</b>						<b>5,035</b>	<b>12,151</b>	<b>14,777</b>	

## Administrative & Police Department | Common Areas

	Space/Use Required to Serve:				Area Required to Serve:			
	Existing Population	11,700 Residents	19,200 Residents	Standard (NSF)	Existing Population	11,700 Residents	19,200 Residents	
<b>Council and Public Areas</b>								
Lobby w/directory & small exhibit space	1	2	2	@ 250 =	250	500	500	
Council chambers w/seating	1	1	1	@ 1200 =	1,200	2,200	2,200	
Council break-out room / Jury Room	0.66	1	1	@ 325 =	215	325	325	
Community Room / EOC	0	1	1	@ 675 =	-	675	675	
Councilmember work room	1	1	1	@ 100 =	100	100	100	
Chambers storage/AV support room	0	1	1	@ 200 =	-	200	200	
Public restroom (M and F) near lobby	1	2	2	@ 100 =	100	200	200	
<b>Subtotal (NSF)</b>					<b>1,865</b>	<b>4,200</b>	<b>4,200</b>	
<b>Departmental Support</b>								
Small meeting area (nook) (1-5 people)	1	2	4	@ 40 =	40	80	160	
Medium meeting area (6-10 people)	1	2	2	@ 216 =	216	432	432	
Large Capacity (16-20 people)	0	1	1	@ 453 =	-	453	453	
Admin supply storage	1	2	4	@ 50 =	50	100	200	
Centralized archival storage (w/o police)	1	1.5	2	@ 600 =	600	900	1,200	
Lunch room	2	3	3	@ 100 =	200	300	300	
Coffee nook	1	1	2	@ 60 =	60	60	120	
<b>Subtotal (NSF)</b>					<b>1,166</b>	<b>2,325</b>	<b>2,865</b>	
<b>Building Support (Restrooms, Janitorial, etc.)</b>								
<b>Subtotal (NSF)</b>					<b>1,080</b>	<b>1,445</b>	<b>1,690</b>	
<b>Total</b>					<b>4,111</b>	<b>7,970</b>	<b>8,755</b>	
<b>Net-to-Gross Factor (35%)</b>					<b>1.35</b>	<b>1.35</b>	<b>1.35</b>	
<b>Grand Total (GSF)</b>					<b>5,549</b>	<b>10,760</b>	<b>11,819</b>	

## Administrative & Police Department | Parking and Outdoor Storage

	Space/Use Required to Serve:					Area Required to Serve:			
	Existing Population	11,700 Residents	19,200 Residents		Standard (NSF)	Existing Population	11,700 Residents	19,200 Residents	
<b>Police Parking</b>									
Planning - vehicles	1	2	3	@	250 =	250	500	750	
City - vehicles	2	3	3	@	250 =	500	750	750	
Engineering - vehicles	2	4	5	@	250 =	500	1,000	1,250	
General staff	19	42	55	@	250 =	4,286	9,338	12,375	
Visitor spaces	10	15	20	@	250 =	2,500	3,750	5,000	
<b>Subtotal (SF)</b>						<b>8,036</b>	<b>15,338</b>	<b>20,125</b>	
<b>Net-to-Gross Factor (20%)</b>						<b>1.20</b>	<b>1.20</b>	<b>1.20</b>	
<b>Total</b>						<b>9,644</b>	<b>18,405</b>	<b>24,150</b>	
<b>Police Parking</b>									
Chief's vehicle	1	1	1	@	250 =	250	250	250	
Detective vehicles	0	2	3	@	250 =	-	500	750	
Patrol cars	4	8	25	@	250 =	1,000	2,000	6,250	
General staff	5	12	7	@	250 =	1,125	2,700	1,575	
Unmarked Vehicles	1	2	2	@	250 =	250	500	500	
Visitor spaces	2	4	6	@	250 =	500	1,000	1,500	
<b>Subtotal (SF)</b>	<b>13</b>	<b>29</b>	<b>44</b>			<b>3,125</b>	<b>6,950</b>	<b>10,825</b>	
<b>Net-to-Gross Factor (20%)</b>						<b>1.20</b>	<b>1.20</b>	<b>1.20</b>	
<b>Total</b>						<b>3,750</b>	<b>8,340</b>	<b>12,990</b>	
<b>Police Outdoor Storage</b>									
Large Property Storage	1	1	1	@	300 =	300	300	300	
Large Boat & Trailer	1	1	1	@	480 =	480	480	480	
Small Boat & Trailer	1	1	1	@	300 =	300	300	300	
Vehicle bays - enclosed	1	2	4	@	250 =	250	500	1,000	
Vehicle stalls - yard	1	3	5	@	250 =	250	750	1,250	
<b>Subtotal (SF)</b>	<b>13</b>	<b>29</b>	<b>44</b>			<b>1,580</b>	<b>2,330</b>	<b>3,330</b>	
<b>Net-to-Gross Factor (35%)</b>						<b>1.35</b>	<b>1.35</b>	<b>1.35</b>	
<b>Total</b>						<b>2,133</b>	<b>3,146</b>	<b>4,496</b>	
<b>Total</b>						<b>15,527</b>	<b>29,891</b>	<b>41,636</b>	

## Public Works | Indoor Spaces

	Space/Use Required to Serve:				Area Required to Serve:		
	Existing Population	11,700 Residents	19,200 Residents	Standard (NSF)	Existing Population	11,700 Residents	19,200 Residents
<b>Offices</b>							
Utility Supervisor	1	1	1	@ 100 =	100	100	100
Utility Worker	1	0	0	@ 0 =	-	-	-
Public Utility Operator	1	0	0	@ 100 =	80	-	-
Crew Leader - Water (Superintendent)	0	1	1	@ 100 =	-	100	100
Crew Leader - Sewer (Superintendent)	0	1	1	@ 100 =	-	100	100
Crew Leader - Streets & Storm (Super.)	0	1	1	@ 100 =	-	100	100
Crew Leader - Parks	0	1	1	@ 80 =	-	80	80
Maintenance Workers	0	11	22	@ 0 =	-	-	-
Maintenance Worker - Parks	0	1	1	@ 0 =	-	-	-
Seasonal Field Worker I	1	1	1	@ 0 =	-	-	-
Seasonal Field Worker II	0	1	1	@ 0 =	-	-	-
Shared cubicles for Workers Above				@ 64 =	64	224	400
Receptionist/Clerical worker	0	1	1	@ 64 =	-	64	64
Meter Reader	0	1	2	@ 64 =	-	64	45
Mechanic	0	1	1	@ 64 =	-	64	64
Maintenance Worker-Facilities	0	1	1	@ 64 =	-	64	64
<b>Total (NSF)</b>	<b>4</b>	<b>23</b>	<b>35</b>		<b>244</b>	<b>960</b>	<b>1,117</b>

## Common Equipment (Admin)

Customer counter	1	1	1	@ 100 =	100	100	100
Photocopier - medium	1	1	1	@ 40 =	40	40	40
Hanging files	2	2	3	@ 18 =	36	36	54
Drafting table/work table	1	1	1	@ 68 =	68	68	68
Bookcase	10	20	40	@ 16 =	160	160	320
Recycle bin	1	1	1	@ 12 =	12	12	12
Coffee station	1	1	2	@ 60 =	60	60	120
<b>Common Equipment Subtotal (NSF)</b>					<b>476</b>	<b>476</b>	<b>714</b>

	Space/Use Required to Serve:					Area Required to Serve:			
	Existing Population	11,700 Residents	19,200 Residents		Standard (NSF)	Existing Population	11,700 Residents	19,200 Residents	
<b>Workroom/Lunchroom/Training</b>									
Lunch room	8	10	10	@	20 =	160	300	300	
Training room/conference room	0.5	1	1	@	480 =	240	480	480	
Audio/visual storage	1	1	1	@	80 =	80	80	80	
Storage (tables/chairs)	1	1	2	@	60 =	60	60	120	
Crew locker room (M/F full-time)	15	23	46	@	15 =	225	415	830	
Crew locker room (M/F seasonal)	8	8	12	@	15 =	120	150	225	
Vending machines (each)	2	2	4	@	15 =	30	30	60	
Mud room/hazardous materials	1	1	2	@	80 =	80	80	160	
Washer/dryer area	1	1	1	@	50 =	50	50	50	
<b>Workroom/Lunchroom Subtotal (NSF)</b>						<b>1,045</b>	<b>1,645</b>	<b>2,305</b>	

<b>Shops</b>									
Water work/storage area	1	3	4	@	1224 =	1,224	3,672	4,896	
Water secure tool storage	1	1	1	@	400 =	400	400	400	
Water workstations in shop	2	3	6	@	120 =	240	360	720	
Water/sewer telemetry	1	1	1	@	120 =	120	120	120	
Sewer work/storage area	1	3	4	@	1224 =	1,224	3,672	4,896	
Sewer secure tool storage	1	1	1	@	400 =	400	400	400	
Sewer workstations (in shop)	3	6	6	@	120 =	360	720	720	
Street/storm work/storage area	1	1	1	@	1224 =	1,224	1,224	1,224	
Street/storm secure tool storage	1	2	2	@	400 =	400	800	800	
Street/storm workstations (in shop)	1	1	2	@	120 =	120	120	240	
Meter work/storage area	0.5	1	1	@	550 =	275	550	550	
Meter/reader test room	1	1	1	@	400 =	400	400	400	
Sign shop work area	1	1	1	@	550 =	550	550	550	
Electric work/storage area	1	1	1	@	550 =	550	550	550	
Carpentry/welding shop	1	1	1	@	550 =	550	550	550	
Custodial functions	0.5	1	1	@	550 =	275	550	550	
Hazardous materials	0.5	1	1	@	160 =	80	160	160	
Flammables	0.5	1	1	@	160 =	80	160	160	
<b>Enclosed Shops Subtotal (NSF)</b>						<b>8,472</b>	<b>14,958</b>	<b>17,886</b>	

	Space/Use Required to Serve:				Area Required to Serve:		
	Existing Population	11,700 Residents	19,200 Residents	Standard (NSF)	Existing Population	11,700 Residents	19,200 Residents
<b>Garage (Heated)</b>							
Mechanic office	0.5	1	1	@ 100 =	50	100	100
Auto parts	0.5	1	1	@ 240 =	120	240	240
Vehicle maintenance bays	1	3	3	@ 420 =	420	1,260	1,260
Vehicle maintenance bays (w/welding)	1	1	1	@ 420 =	420	420	420
Truck maintenance bay (2 ton hoist)	1	1	1	@ 420 =	420	420	420
Truck maintenance bay (pit work area)	1	1	1	@ 420 =	420	420	420
Water - vactor trucks	1	1	1	@ 350 =	350	350	350
Water - spray rig-pesticide	1	1	1	@ 300 =	300	300	300
Street - pothole patch	1	1	1	@ 300 =	300	300	300
Street - sweeper	0	1	1	@ 350 =	-	350	350
Street - snow plow/sander	0	1	1	@ 300 =	-	300	300
<b>Enclosed Garage Subtotal (NSF)</b>					<b>2,800</b>	<b>4,460</b>	<b>4,460</b>
<b>Subtotal (SF)</b>					<b>13,037</b>	<b>22,499</b>	<b>26,482</b>
<b>Net-to-Gross Factor (20%)</b>					<b>1.20</b>	<b>1.20</b>	<b>1.20</b>
<b>Grand Total (GSF)</b>					<b>15,644</b>	<b>26,999</b>	<b>31,778</b>

## Public Works | Covered Storage (Non-heated)

Equipment	Space/Use Required to Serve:				Area Required to Serve:			
	Existing Population	11,700 Residents	19,000 Residents	Standard (NSF)	Existing Population	11,700 Residents	19,000 Residents	
Emergency operations	1	1	1	@ 576 =	576	576	576	
Misc. signs/equipment	0.5	1	1	@ 600 =	300	600	600	
Sewer - generators	1	1	1	@ 300 =	300	300	300	
Water - service box truck	2	3	4	@ 250 =	500	750	1,000	
Water - flatbed truck	1	2	4	@ 250 =	250	500	1,000	
Water - loader backhoe	1	2	2	@ 200 =	200	400	400	
Water - pickups	3	10	12	@ 250 =	750	2,500	3,000	
Water - dump trucks	1	2	2	@ 300 =	300	600	600	
Water - misc trailers	1	2	2	@ 200 =	200	400	400	
Sewer - generators	1	1	1	@ 300 =	300	300	300	
Sewer - dump trucks	1	1	1	@ 300 =	300	300	300	
Sewer - backhoe	1	1	1	@ 250 =	250	250	250	
Sewer - pickups	1	2	2	@ 250 =	250	500	500	
Street - slope mower	1	1	1	@ 300 =	300	300	300	
Street - bucket truck	1	1	1	@ 300 =	300	300	300	
Street - hydraulic sander	1	2	2	@ 350 =	350	700	700	
Street - tractor	1	2	2	@ 300 =	300	600	600	
Street - CC10 roller	1	1	1	@ 200 =	200	200	200	
Street - chipper	1	1	1	@ 200 =	200	200	200	
Street - backhoe	1	1	2	@ 200 =	200	200	400	
Street - dump truck	1	1	1	@ 300 =	300	300	300	
Street - flatbed oil distributor	1	1	1	@ 300 =	300	300	300	
Street - huber grader	0	1	1	@ 350 =	-	350	350	
Street - mini-grader	1	1	1	@ 300 =	300	300	300	
Street - LED message board	1	1	1	@ 200 =	200	200	200	
Street - pickups	0	1	2	@ 250 =	-	250	500	
Street - drive under sand beds	0	1	1	@ 350 =	-	350	350	
Fleet - vehicles to be maintained	2	4	5	@ 250 =	500	1,000	1,250	
Equipment Rental - vehicles	3	4	5	@ 250 =	750	1,000	1,250	
<b>Covered Equipment Subtotal (NSF)</b>					<b>8,676</b>	<b>14,526</b>	<b>16,726</b>	
<b>Net-to-Gross Factor (35%)</b>					<b>1.35</b>	<b>1.35</b>	<b>1.35</b>	
<b>Storage Total (GSF)</b>					<b>11,713</b>	<b>19,610</b>	<b>22,580</b>	

## Public Works | Outdoor Storage

	Space/Use Required to Serve:					Area Required to Serve:			
	Existing Population	11,700 Residents	19,000 Residents	Standard (NSF)	Existing Population	11,700 Residents	19,000 Residents		
<b>Covered Materials</b>									
Sand	0.25	1	2	@ 2,000 =	500	1,000	2,000		
Cold mix	1	1	1	@ 200 =	200	200	200		
Bark	1	1	1	@ 200 =	200	200	200		
Top soil	1	1	1	@ 200 =	200	200	200		
Debris - recyclable storage	0.5	1	1	@ 400 =	200	400	400		
Water pipe pvc	0.5	1	1	@ 400 =	200	400	400		
Water valve storage	0.5	1	1	@ 400 =	200	400	400		
Sewer pipe		1	1	@ - =	-	-	-		
HDPE/PVC pipe (4-16 inch)	0.5	1	1	@ 300 =	150	300	300		
<b>Subtotal (SF)</b>					<b>1,850</b>	<b>3,100</b>	<b>4,100</b>		
<b>Uncovered Materials</b>									
Gravel	0.25	0.5	1	@ 700 =	175	175	700		
Rock	0.5	1	1	@ 200 =	100	200	200		
Rip rap	0.5	1	1	@ 200 =	100	200	200		
Culvert	0.5	1	1	@ 200 =	100	200	200		
Guard rails	0.5	1	1	@ 200 =	100	200	200		
Debris	0.5	1	1	@ 1000 =	500	500	1,000		
Chip seal	0.25	0.5	1	@ 2500 =	625	625	2,500		
Water manhole storage	0.5	1	1	@ 400 =	200	400	400		
Street/storm manhole, misc.	0.5	1	1	@ 400 =	200	400	400		
<b>Subtotal (SF)</b>					<b>2,100</b>	<b>2,900</b>	<b>5,800</b>		
<b>Yard Area</b>									
Vehicle clean-out/pre-wash	0.5	1	1	@ 840 =	420	840	840		
Vehicle wash rack	1	1	1	@ 840 =	840	840	840		
1000 gallon diesel fuel tank	1	1	1	@ 75 =	75	75	75		
Drive-through fueling station	1	1	1	@ 600 =	600	600	600		
Sewer dump bin	0.5	1	1	@ 1600 =	800	1,600	1,600		
Street sweepage bin	0.5	1	1	@ 1600 =	800	1,600	1,600		
Dewatering/decanting	1	1	1	@ 300 =	300	300	300		
Loading ramp - sander	1	1	1	@ 480 =	480	480	480		
Dumpster - Waste pickup	1	1	12	@ 300 =	300	300	3,600		
<b>Yard Area Subtotal (SF)</b>					<b>4,615</b>	<b>6,635</b>	<b>9,935</b>		
<b>Total</b>					<b>8,565</b>	<b>12,635</b>	<b>19,835</b>		
<b>Net-to-Gross Factor (35%)</b>					<b>1.35</b>	<b>1.35</b>	<b>1.35</b>		
<b>Exterior Area Subtotal</b>					<b>8,566</b>	<b>12,636</b>	<b>19,836</b>		

## Public Works | Parking

	Space/Use Required to Serve:					Area Required to Serve:		
	Existing Population	11,700 Residents	19,000 Residents		Standard (NSF)	Existing Population	11,700 Residents	19,000 Residents
Public Works - vehicles	2	3	3	@	250 =	500	750	750
General staff	4	23	35	@	250 =	900	5,175	7,875
Visitor spaces	2	4	6	@	250 =	500	1,000	1,500
<b>Subtotal (SF)</b>						<b>1,900</b>	<b>6,925</b>	<b>10,125</b>
<b>Net-to-Gross Factor (20%)</b>						<b>1.20</b>	<b>1.20</b>	<b>1.20</b>
<b>Total (SF)</b>						<b>2,280</b>	<b>8,310</b>	<b>12,150</b>

## Public Works | Landscape Buffer

	Area Required		
	Existing Population	11,700 Residents	19,000 Residents
<b>Site Area (SF)</b>	<b>38,203</b>	<b>67,555</b>	<b>86,345</b>
<b>Landscape Buffer Ratio</b>	<b>35%</b>	<b>35%</b>	<b>35%</b>
<b>Total (SF)</b>	<b>13,371</b>	<b>23,644</b>	<b>30,221</b>

# Appendix D: Cost Estimates

## Construction Costs to Serve 19,200 Residents

		Unit	Unit Cost	Sub Total
City Hall	16,346	SF	\$ 275	\$ 4,495,150
Court/Council/Lobby	5,670	SF	\$ 400	\$ 2,268,000
Police Department	14,777	SF	\$ 350	\$ 5,171,950
Site Development - City Hall	2.04	AC	\$ 608,600	\$ 1,241,544
Public Works Shops Building	31,778	SF	\$ 284	\$ 9,035,121
Covered Equipment Storage- Open/Unheated	22,580	SF	\$ 78	\$ 1,756,724
Covered Materials Storage - Open/Unheated	4,100	SF	\$ 86	\$ 350,919
Site Development - Public Works	2.68	AC	\$ 822,000	\$ 2,202,960
Vehicle Fueling and Wash Station	6,300	SF	\$ 262	\$ 1,648,647
Sustainability/Green Premium (LEED Gold)	2.5	PCt	\$29,008,000	\$ 725,200
Ground Source Heat Exchange	1	LS	\$ 750,000	\$ 750,000
Vehicle Charging Stations	10	EA	\$ 8,750	\$ 87,500
<b>TOTAL CONSTRUCTION COST (Jan 2014 COST)</b>				<b>\$ 29,733,715</b>

Estimate is based on Design/Bid/Build Contract Procurement

### EXCLUSIONS:

Washington State Sales Tax	Wetlands Development/Mitigation
Architect/Engineer Fees	Site Acquisition
Construction Contingency (Owners Portion)	Aparatus/Vehicles
Testing & Inspection	Legal
Permits	Builders Risk Insurance
1% for Art	Moving/Relocation Costs
Firing Range Props/Targets/Equipment	Off-Site Work (Streets/Signalizaton)
Toxic Soil/Hazardous Materials Removal	Escalation
Construction Management/Administration/Pre-Construction Services	
GC/CM Contract Premiums (Add Approximately 10%)	

Project Cost Summary to Serve 19,200 Residents

City Hall/Police/Courts	36,793 SF
Public Works	31,778 SF
Covered Equip/Mat Storage	26,680 SF
Site (Combined rounded)	4.75 ACRE

**Land Acquisition**

City Hall Land (rounded)	2.00 AC	\$ 1,000,000
Public Works Land (rounded)	2.75 AC	\$ 137,500
<b>Total Land Cost</b>		<b>\$ 1,137,500</b>

**Government Facilities Plan - Construction Cost (Jan. 2014) \$ 29,733,715**

Washington State Sales Tax	8.60%	\$ 2,557,099
Architect/Engineer Fees	12.00%	\$ 3,568,046
Owner Consultants (Geotech, Survey, Due Diligence)	3.00%	\$ 892,011
Construction Contingency + WSST	10.00%	\$ 3,229,081
Testing & Inspection	1.50%	\$ 446,006
Permits	1.00%	\$ 297,337
1% for Art	1.00%	\$ 297,337
Construction Management/Administration	4.00%	\$ 1,189,349
Legal	0.50%	\$ 148,669
Builders Risk Insurance	0.75%	\$ 223,003
Moving/Relocation Costs		\$ 50,000
Furnishings & Equipment (68571 sf x 15.00 + WSST)	4.00%	\$ 1,189,349
Shops/Vehicle/Warehouse Equip Allowance		\$ 2,058,000
Technology Cabling and Equipment	0.50%	\$ 148,669
Soft Cost Contingency	3.00%	\$ 488,819
<b>Total Soft Costs</b>		<b>\$ 16,782,774</b>

**Total Project Cost (Jan. 2014) \$ 47,653,989**

Estimate is based on Design/Bid/Build Contract Procurement

EXCLUSIONS:

Washington State Sales Tax	Wetlands Development/Mitigation
Architect/Engineer Fees	Site Acquisition
Construction Contingency (Owners Portion)	Aparatus/Vehicles
Testing & Inspection	Legal
Permits	Builders Risk Insurance
1% for Art	Moving/Relocation Costs
Firing Range Props/Targets/Equipment	Off-Site Work (Streets/Signalizaton)
Toxic Soil/Hazardous Materials Removal	Escalation
Construction Management/Administration/Pre-Construction Services	
GC/CM Contract Premiums (Add Approximately 10%)	

Construction Costs to Serve 11,700 Residents

		Unit	Unit Cost	Sub Total
City Hall	14,145	SF	\$ 275	\$ 3,889,875
Court/Council/Lobby	5,529	SF	\$ 400	\$ 2,211,600
Police Department	12,151	SF	\$ 350	\$ 4,252,850
Site Development - City Hall	2.04	AC	\$ 608,600	\$ 1,241,544
Public Works Shops Building	26,999	SF	\$ 284	\$ 7,676,356
Covered Equipment Storage - Open/Unheated	19,610	SF	\$ 78	\$ 1,525,658
Covered Materials Storage - Open/Unheated	3,100	SF	\$ 86	\$ 265,329
Site Development - Public Works	2.68	AC	\$ 822,000	\$ 2,202,960
Vehicle Fueling and Wash Station	6,300	SF	\$ 262	\$ 1,648,647
Sustainability/Green Premium (LEED Gold)	2.5	PCt	\$25,867,000	\$ 646,675
Ground Source Heat Exchange	1	LS	\$ 750,000	\$ 750,000
Vehicle Charging Stations	10	EA	\$ 8,750	\$ 87,500
<b>TOTAL CONSTRUCTION COST (Jan 2014 COST)</b>				<b>\$ 26,398,994</b>

Estimate is based on Design/Bid/Build Contract Procurement

EXCLUSIONS:

Washington State Sales Tax	Wetlands Development/Mitigation
Architect/Engineer Fees	Site Acquisition
Construction Contingency (Owners Portion)	Aparatus/Vehicles
Testing & Inspection	Legal
Permits	Builders Risk Insurance
1% for Art	Moving/Relocation Costs
Firing Range Props/Targets/Equipment	Off-Site Work (Streets/Signalizaton)
Toxic Soil/Hazardous Materials Removal	Escalation
Construction Management/Administration/Pre-Construction Services	
GC/CM Contract Premiums (Add Approximately 10%)	

Project Cost Summary to Serve 11,700 Residents

City Hall/Police/Courts	31,825 SF
Public Works	26,999 SF
Covered Equip/Mat Storage	22,710 SF
Site (Combined rounded)	4.75 ACRE

**Land Acquisition**

City Hall Land (rounded)	2.00 AC	\$ 1,000,000
Public Works (rounded)	2.75 AC	\$ 137,500
<b>Total Land Cost</b>		<b>\$ 1,137,500</b>

**Government Facilities Plan - Construction Cost (Jan. 2014) \$ 26,398,994**

Washington State Sales Tax	8.60%	\$ 2,270,313
Architect/Engineer Fees	12.00%	\$ 3,167,879
Owner Consultants (Geotech, Survey, Due Diligence)	3.00%	\$ 791,970
Construction Contingency + WSST	10.00%	\$ 2,866,931
Testing & Inspection	1.50%	\$ 395,985
Permits	1.00%	\$ 263,990
1% for Art	1.00%	\$ 263,990
Construction Management/Administration	4.00%	\$ 1,055,960
Legal	0.50%	\$ 131,995
Builders Risk Insurance	0.75%	\$ 197,992
Moving/Relocation Costs		\$ 50,000
Furnishings & Equipment (58932 sf x 15.00 + WSST)	4.00%	\$ 1,055,960
Shops/Vehicle/Warehouse Equip Allowance		\$ 2,058,000
Technology Cabling and Equipment	0.50%	\$ 131,995
Soft Cost Contingency	3.00%	\$ 441,089
<b>Total Soft Costs</b>		<b>\$ 15,144,049</b>

**Total Project Cost (Jan. 2014) \$ 42,680,542**

Estimate is based on Design/Bid/Build Contract Procurement

EXCLUSIONS:

Washington State Sales Tax	Wetlands Development/Mitigation
Architect/Engineer Fees	Site Acquisition
Construction Contingency (Owners Portion)	Aparatus/Vehicles
Testing & Inspection	Legal
Permits	Builders Risk Insurance
1% for Art	Moving/Relocation Costs
Firing Range Props/Targets/Equipment	Off-Site Work (Streets/Signalizaton)
Toxic Soil/Hazardous Materials Removal	Escalation
Construction Management/Administration/Pre-Construction Services	
GC/CM Contract Premiums (Add Approximately 10%)	

## City Hall/Police Station Construction Components

The cost methodology shown below differs from that shown on the previous pages but was performed as a check for the average hard cost of \$324.00 per square foot for the City Hall/Police Station facility. The calculations in this appendix provide further detail about the cost divisions that constitute a facility

(e.g. HVAC, roofing, plumbing etc.). The estimated construction cost of \$289.71 per square foot shown below rises to \$327.01 when design contingency and contractor's overhead and profit are added.

ITEM	DESCRIPTION	QUANTITY UNIT	UNIT COST	TOTAL	\$/SF
<b>A10</b>	<b>FOUNDATIONS</b>				
01000	PREMIUM SALLYPORT/THICKENED SLABS	2,500 SF	2.50	6,250	
03000	SLAB ON GRADE/GRAVEL/VAPOR BARRIER	21,715 SFA	6.35	137,890	
03000	STANDARD FOUNDATIONS	21,715 SFA	12.50	271,438	
03300	ELEVATOR PIT	1 LS	12,500	12,500	
<b>A10</b>	<b>FOUNDATIONS</b>		<b>DIVISION TOTAL</b>	<b>428,078</b>	<b>11.63</b>
<b>B10</b>	<b>SUPERSTRUCTURE</b>				
05000	STEEL FLOOR STRUCTURE/DECK/TOPPING	15,078 SFA	29.88	450,531	
05120	OVERHANGS/COVERED AREA/CANOPIES	5,500 SFA	19.05	104,775	
05120	STEEL ROOF STRUCTURE/BEAMS/OW JOISTS/DECK	21,715 SFA	19.05	413,671	
<b>B10</b>	<b>SUPERSTRUCTURE</b>		<b>DIVISION TOTAL</b>	<b>968,976</b>	<b>26.34</b>
<b>B20</b>	<b>EXTERIOR CLOSURE</b>				
07000	EXTERIOR WALLS	36,793 SFA	28.06	1,032,412	
08000	EXT DOORS/FRAME/Hardware/ENTRIES	36,793 SFA	1.15	42,312	
08000	EXTERIOR OH DOORS	2 EA	5,500	11,000	
08500	EXTERIOR WINDOWS	36,793 SFA	18.15	667,793	
<b>B20</b>	<b>EXTERIOR CLOSURE</b>		<b>DIVISION TOTAL</b>	<b>1,753,516</b>	<b>47.66</b>
<b>B30</b>	<b>ROOFING</b>				
07330	SLOPED ROOFING/INSUL/SHEETMETAL	27,215 SF	18.50	503,478	
<b>B30</b>	<b>ROOFING</b>		<b>DIVISION TOTAL</b>	<b>503,478</b>	<b>13.68</b>
<b>C10</b>	<b>INTERIOR CONSTRUCTION</b>				
08000	INTERIOR DOORS/FRAME/HARDWARE	36,793 SFA	5.50	202,362	
09250	PARTITIONS - STANDARD OFFICES	36,793 SFA	12.50	459,913	
09250	PREM POLICE INTERIORS	3,800 SFA	6.50	24,700	
09250	PREM. COUNCIL/COURT	5,670 SFA	8.00	45,360	
10000	FITTINGS/MISC SPECIALTIES-BASIC	36,793 SFA	3.50	128,776	
10000	FITTINGS/MISC SPECIALTS - PREM POLICE	3,800 SFA	5.00	19,000	
<b>C10</b>	<b>INTERIOR CONSTRUCTION</b>		<b>DIVISION TOTAL</b>	<b>880,110</b>	<b>23.92</b>
<b>C20</b>	<b>STAIRS</b>				
05000	STAIRS W/RAILS	2 FLT	12,500	25,000	
<b>C20</b>	<b>STAIRS</b>		<b>DIVISION TOTAL</b>	<b>25,000</b>	<b>0.68</b>

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT COST	TOTAL	\$/SF
<b>C30</b>	<b>INTERIOR FINISHES</b>					
09000	FLOOR FINISHES - PREM COURT/COUNCIL	5,670	SFA	5.00	28,350	
09000	FLOOR FINISHES-BASIC	36,793	SFA	7.50	275,948	
09000	WALL FINISHES - BASIC	36,793	SFA	6.50	239,155	
09000	WALL FINISHES - PREM. COURT/COUNCIL	5,670	SF	5.50	31,185	
09000	WALL FINISHES-PREM POLICE	3,800	SFA	2.50	9,500	
09500	CEILING FINISHES - BASIC	36,793	SFA	5.25	193,163	
09500	CEILING FINISHES- PREM COURT/COUNCIL	5,670	SFA	5.50	31,185	
<b>C30</b>	<b>INTERIOR FINISHES</b>			<b>DIVISION TOTAL</b>	<b>808,485</b>	<b>21.97</b>
<b>D10</b>	<b>CONVEYING SYSTEMS</b>					
14000	ELEVATOR 2-STOP	1	LS	65,000	65,000	
<b>D10</b>	<b>CONVEYING SYSTEMS</b>			<b>DIVISION TOTAL</b>	<b>65,000</b>	<b>1.77</b>
<b>D20</b>	<b>PLUMBING</b>					
15000	PLUMBING	36,793	SFA	9.50	349,534	
<b>D20</b>	<b>PLUMBING</b>			<b>DIVISION TOTAL</b>	<b>349,534</b>	<b>9.50</b>
<b>D30</b>	<b>HVAC</b>					
15500	HVAC	36,793	SFA	42.00	1,545,306	
<b>D30</b>	<b>HVAC</b>			<b>DIVISION TOTAL</b>	<b>1,545,306</b>	<b>42.00</b>
<b>D40</b>	<b>FIRE PROTECTION</b>					
15000	FIRE PROTECTION SYSTEM	36,793	SFA	4.50	165,569	
<b>D40</b>	<b>FIRE PROTECTION</b>			<b>DIVISION TOTAL</b>	<b>165,569</b>	<b>4.50</b>
<b>D50</b>	<b>ELECTRICAL</b>					
16000	ELECTRICAL	36,793	SFA	35.00	1,287,755	
<b>D50</b>	<b>ELECTRICAL</b>			<b>DIVISION TOTAL</b>	<b>1,287,755</b>	<b>35.00</b>
<b>E10</b>	<b>EQUIPMENT</b>					
11000	BUILDING EQUIPMENT/APPLIANCES	36,793	SFA	1.50	55,190	
<b>E10</b>	<b>EQUIPMENT</b>			<b>DIVISION TOTAL</b>	<b>55,190</b>	<b>1.50</b>
<b>E20</b>	<b>FURNISHINGS</b>					
12000	CASEWORK - PREM COURT/COUNCIL	5,670	SFA	15.00	85,050	
12000	CASEWORK - PREM POLICE	3,800	SFA	2.50	9,500	
12000	CASEWORK- BASIC	36,793	SFA	3.50	128,776	
<b>E20</b>	<b>FURNISHINGS</b>			<b>DIVISION TOTAL</b>	<b>223,326</b>	<b>6.07</b>
<b>F10</b>	<b>SPECIAL CONSTRUCTION</b>					
01000	PREMIUM FIRING RANGE CONSTRUCTION	1	LS	900,000	900,000	
	EXCLUDES PROPS					
<b>F10</b>	<b>SPECIAL CONSTRUCTION</b>			<b>DIVISION TOTAL</b>	<b>900,000</b>	<b>24.46</b>
<b>Z10</b>	<b>GENERAL REQUIREMENTS</b>					
01000	BUILDING AREA	36,793	SF			
01000	GENERAL CONDITIONS	14	MO	50,000	700,000	
<b>Z10</b>	<b>GENERAL REQUIREMENTS</b>			<b>DIVISION TOTAL</b>	<b>700,000</b>	<b>19.03</b>
<b>ESTIMATE SUBTOTAL</b>					<b>10,659,321</b>	<b>289.71</b>

## Site Development Components

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT COST	TOTAL	\$/SF
<b>G10</b>	<b>SITE PREPARATION</b>					
02000	SITE AREA - OVERALL	2	AC			
02000	SITE CLEARING-FORESTRY BY OTHERS	92,112	SF	0.10	9,211	
02200	EARTHWORK/GRADING CUT & FILL	8,870	CY	10.00	88,700	
	ALLOW 2' BALANCED SITE					
02220	SITE MOBILIZATION	1	LS	24,000	24,000	
02310	FINE GRADING	92,112	SF	0.07	6,448	
02370	EROSION CONTROL	1	LS	2,000	2,000	
<b>G10</b>	<b>SITE PREPARATION</b>			<b>DIVISION TOTAL</b>	<b>130,359</b>	
<b>G20</b>	<b>SITE IMPROVEMENTS</b>					
02740	ASPHALT PARKING PAVING	30,100	SF	4.75	142,975	
	IMPERVIOUS					
02750	CONCRETE VEHICLE/YARD PAVEMENT	19,896	SF	8.00	159,168	
	IMPERVIOUS					
02750	UTILITY/DUMPSTER PADS	2,000	SF	10.00	20,000	
02770	CURBING/STRIPPING/SIGNAGE	49,996	SFA	1.50	74,994	
02775	CONCRETE SIDEWALK/PEDESTRIAN WALKWAYS	7,500	SF	5.50	41,250	
02800	MISC SITE IMPROVEMENTS/FURNISHINGS	1	LS	15,000	15,000	
02820	FENCING/GATES POLICE YARD	1	LS	50,000	50,000	
02820	FENCING/GATES/SCREEN WALL	1	LS	35,000	35,000	
02900	LANDSCAPE/IRRIGATION	13,000	SFA	6.50	84,500	
<b>G20</b>	<b>SITE IMPROVEMENTS</b>			<b>DIVISION TOTAL</b>	<b>622,887</b>	
<b>G30</b>	<b>SITE CIVIL / MECHANICAL UTILITIES</b>					
02510	WATER SYSTEM TO BLDG	1	LS	35,000	35,000	
02530	SANITARY PIPING TO BLDG	1	LS	5,000	5,000	
02630	STORM COLLECTION/WATER QUALITY	79,211	SFA	1.75	138,619	
	DETENTION BY OTHERS					
<b>G30</b>	<b>SITE CIVIL / MECHANICAL UTILITIES</b>			<b>DIVISION TOTAL</b>	<b>178,619</b>	
<b>G40</b>	<b>SITE ELECTRICAL UTILITIES</b>					
16000	EMERGENCY GENERATOR	1	LS	95,000	95,000	
16000	SITE ELECTRICAL/LIGHTING	1	LS	35,000	35,000	
<b>G40</b>	<b>SITE ELECTRICAL UTILITIES</b>			<b>DIVISION TOTAL</b>	<b>130,000</b>	
				<b>ESTIMATE SUBTOTAL</b>	<b>1,061,866</b>	

# Appendix E: Proposed Mitigation Fee

## Mitigation Fee

### 1. What is a “mitigation fee”?

- **A one-time payment by each unit of new development...**
- **that the City uses to mitigate the impact of the new development on government facilities...**
- **by building additional facilities identified in the government facilities plan**

## Mitigation Fee

### 2. What is the impact of housing development?

Housing	# of Units	Units
Existing	1,690	dwelling units
Average Sq. Ft. per Unit	x 1,861	sq. ft.
Total Existing Housing	3,145,090	sq. ft.
Future	6,050	dwelling units
Average Sq. Ft. per Unit	x 2,095	sq. ft.
Total Future Housing	12,674,750	sq. ft.
Total All Housing	15,819,840	sq. ft.

*Mitigation Fee*

### 3. What is the impact of commercial development?

Commercial	# of Units	Units
Existing	232,463	sq. ft.
Future	+ 1,165,000	sq. ft.
Total Commercial	1,397,463	sq. ft.

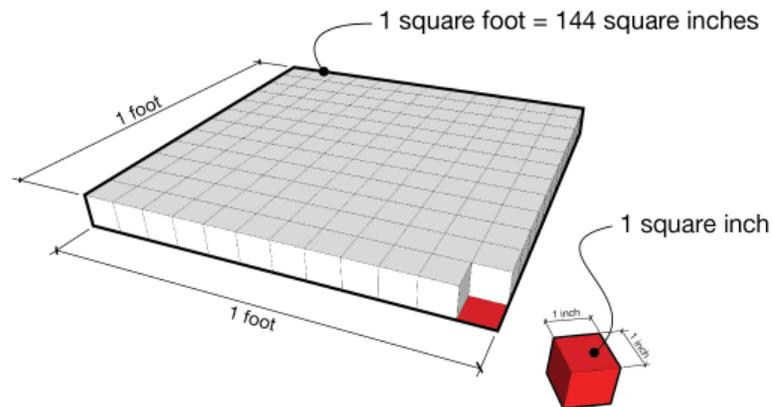
*Mitigation Fee*

### 4. What is the impact of all development?

Type	# of Units	Units
Total Housing	15,819,840	sq. ft.
Total Commercial	+ 1,397,463	sq. ft.
Total All Development	17,217,303	sq. ft.
Sq. Ft. of Government Facilities (per Plan)	÷ 95,251	sq. ft.
Ratio: Sq. Ft. of Gov Facilities per Sq. Ft. of Development	0.00553	sq. ft.

**Mitigation Fee**

## 5. What is “0.00553 sq. ft.”? = almost 1 square inch



Every square foot of development needs  
about 1 square inch of government facilities

**Mitigation Fee**

## 6. Why isn't the ratio based on new development, and not existing?

- The new city hall and public works facility will serve both new and existing development
- Most of the cost of the city hall and public works facility will be paid by new development (will be shown in section 10 & 11)

**Mitigation Fee****7. What is the size and cost of government facilities in the plan?**

Cost Component	Cost	Size	Cost per Sq. Ft. of Buildings
City Hall Land	\$ 1,000,000	2.00 acres	
Public Works Land	137,500	2.75 acres	
Construction	29,733,715	95,251 sq. ft.	
Soft Costs	16,782,774		
Total	\$47,653,989	÷ 95,251 sq. ft	= \$ 500.30

**Mitigation Fee****8. How much is the mitigation fee?**

Cost per Sq. Ft. of Government Facilities	\$ 500.30
Ratio: Sq. Ft. of Gov Facilities per Sq. Ft. of Development	x 0.00553
Mitigation Fee per Sq. Ft. of Future Development	\$ 2.77
Average Sq. Ft. per New Dwelling Unit	x 2,095
Mitigation Fee per New Dwelling Unit	\$ 5,803.15

*Mitigation Fee***9. Compare mitigation fees**

Type of Future Development	Unit of Development	Proposed Mitigation Fee	Placeholder Fee From Dvpmnt Agreement
Commercial	square foot	\$ 2.77	\$ 1.50
Residential	dwelling unit	\$ 5,803.15	\$ 1,750.00

*Mitigation Fee***10. What is new development's share of the cost?**

Development	# of Sq. Ft.
Total New Housing	12,674,750
Total New Commercial	+ 1,165,000
Total New Development	13,839,750
Total ALL Development	÷ 17,217,303
New Development's Share	80.38%

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# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
<b>SUBJECT:</b> <b>AB14-032</b> <b>Authorizing the Mayor to execute a Professional Services Agreement with BergerABAM for the 2015 Comprehensive Plan Update in accordance with Resolution No. 14-936</b>	<b>Agenda Date: March 6, 2014</b>	
	<b>AB14-032</b>	
	Mayor Dave Gordon	
	City Administrator Christy Todd	
	City Attorney P. Stephen DiJulio	
	City Clerk – Brenda L. Martinez	
	Community Development – Stacey Welsh	<b>X</b>
	Finance – May Miller	
	Economic Development – Andy Williamson	
	Parks/Natural Resources – Aaron Nix	
Cost Impact (see also Fiscal Note): \$82,506.00	Police – Chief Kiblinger	
Fund Source: DOC Grant; City funds	Public Works – Seth Boettcher	
Timeline: Due June 30, 2015	Court Administrator – Stephanie Metcalf	
<b>Agenda Placement:</b> <input type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input checked="" type="checkbox"/> City Administrator		
<b>Attachments: Resolution No. 14-936, Professional Services Agreement</b>		
<b>SUMMARY STATEMENT:</b>		
<p>Per RCW 36.70A.130(5)(a), cities shall take action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of RCW 36.70A. The City of Black Diamond is required to complete its mandated update to the Comprehensive Plan and associated development regulations by June 30, 2015. Towards that effort, in December 2013, the City budgeted for the hiring of a consultant to assist the City in this task. In December, 2013, the City solicited proposals from qualified firms to complete the required update. The City received five proposals, which were reviewed by staff: Christy Todd, Stacey Welsh, Aaron Nix and Seth Boettcher. From the initial five proposals, three consultant firms were interviewed on February 2, 2013. Staff recommends the firm BergerABAM to assist the City in completing this work.</p>		
<p>The City has been awarded a Growth Management Act Update grant from the Washington State Department of Commerce (DOC) to assist with completion of the update work. There is a DOC grant deliverable deadline at the end of March, 2014, that BergerABAM has stated they will be able to meet. The BergerABAM proposed scope of work is attached for Council’s review, however, ongoing negotiations are expected to continue, in order to finalize the scope of work. The scope of work is largely agreed-upon, but further negotiations need to occur with BergerABAM due to the following:</p>		
<ol style="list-style-type: none"> <li>1) How to incorporate the to-be-adopted General Government Facilities Mitigation Fee Plan;</li> <li>2) How to incorporate several other City plans that City staff anticipate updating in 2014-2015 (Water Services Plan, Parks Plan);</li> <li>3) The need for updated traffic counts and other transportation-related planning issues;</li> <li>4) The need for additional BergerABAM and DKS staff time due to the above-listed</li> </ol>		

additional work not contemplated in BergerABAM's proposed scope of work.

Staff is requesting Council's approval of the attached Resolution, with an understanding that later in the year, the Council will be asked to consider a contract amendment with BergerABAM. City staff is working diligently to complete an agreed scope of work with BergerABAM in time to meet the DOC grant deliverable deadline.

**FISCAL NOTE (Finance Department):**

The Washington State Department of Commerce (DOC)– Growth Management Act Update Grant was awarded to the City of Black Diamond for \$18,000 for 2014-2015 time period. The project budget for 2014 had only included one half of the Grant or \$9,000 plus \$50,000 from REET I and \$15,000 Transfer from the Utility Departments for their update of the Utility Capital Facilities Element of the Comp Plan update. The 2014 Project budget will be adjusted with the first 2014 budget change to include the full \$18,000 DOC Grant. Any portion of the project costs and budget transfers not completed in 2014 will be carried over to the 2015 Budget. Any additional costs that may be necessary will also be included in the Mayor's preliminary 2015 Budget.

<b>Total 2014-2015 Budget Available:</b>		<b>Total 2014-2015 Project Expected Costs</b>	
\$ 18,000	State DOC Grant	BergerABAM Contract	\$82,506
\$ 50,000	REET I	Contingency	494
\$ 15,000	Utility Funds Transfer		
<hr/>		<hr/>	
\$83,000			83,000

**COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:** The Planning and Community Services Committee was briefed on the RFP review process at the February 5, 2014 Committee meeting.

**RECOMMENDED ACTION: MOTION to adopt Resolution 14-936, authorizing a Professional Services Agreement, in substantially similar form, with BergerABAM for the 2015 Comprehensive Plan Update.**

**RECORD OF COUNCIL ACTION**

<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
March 6, 2014		

## CITY OF BLACK DIAMOND PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the or this "Agreement"), for reference purposes only, is dated \_\_\_\_\_, 2014 and is entered into by and between

CITY OF BLACK DIAMOND, WASHINGTON (the "City")

Physical Address: 24301 Roberts Drive

Mailing Address: PO Box 599

Black Diamond, WA 98010

Contact: Stacey Welsh      Phone: 360-886-5710      Fax : 360-886-2592

and

BergerABAM ("Consultant")

1111 Main Street, Suite 300

Vancouver, WA 98660-2958

Contact: Helen Devery      Phone: 360-823-6114      Fax: 360-823-6101

Tax Id No.: \_\_\_\_\_

for professional services in connection with the

### **2015 Comprehensive Plan Update**

## TERMS AND CONDITIONS

### **1. Services by Consultant**

1.1 Consultant shall perform the services described in the Scope of Work attached to this Agreement as Exhibit "A." The services performed by Consultant shall not exceed the Scope of Work nor shall the Consultant be entitled to a greater amount of compensation as that provided in this Agreement without the prior written authorization of the City.

1.2 The City may from time to time require changes or modifications in the Scope of Work. Such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to this Agreement.

1.3 Consultant represents and warrants that it, its staff to be assigned to the Project, and its subconsultants and their staff have the requisite training, skill, and experience necessary to provide the services required by this Agreement and are appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant and its subconsultants under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

## **2. Schedule of Work**

2.1 Consultant shall perform the services described in the Scope of Work Exhibit "A" in a timely manner with the goal to be ready to submit a complete work product to the Department of Commerce by June 30, 2015. Delays due to unforeseen circumstances (i.e., additional meetings or extended review periods) may result in additional effort necessary for project management and administration.

2.2 Consultant will work within the project schedule and will proceed with the work and shall assure that it, and its subconsultants, will have adequate staffing at all times in order to complete the Scope of Work in a timely manner. If factors beyond Consultant's control that could not have been reasonably foreseen as of the date of this Agreement cause delay, then the parties will negotiate in good faith to determine whether an extension is appropriate. The Consultant shall provide the City with written notice of any delay, or potential delay, that may trigger the need for a time extension within 3 business days after the Consultant becomes aware of the delay or potential delay.

2.3 Consultant is authorized to proceed with services upon execution of this agreement.

## **3. Compensation**

TIME AND MATERIALS NOT TO EXCEED. Compensation for the services provided in the Scope of Work shall not exceed \$82,506.00 without the written authorization of the City and will be based on the list of billing rates and reimbursable expenses attached hereto as Exhibit "C."

## **4. Payment**

4.1 Consultant shall maintain time and expense records and provide them to the City monthly, along with monthly invoices, in a format acceptable to the City for work performed to the date of the invoice.

4.2 All invoices shall be paid by City warrant within sixty (60) days of actual receipt by the City of an invoice conforming in all respects to the terms of this Agreement.

4.3 Consultant shall keep cost records and accounts pertaining to this Agreement available for inspection by City representatives for three (3) years after final payment unless a longer period is required by a third-party agreement. Consultant shall make copies available to the City on request.

4.4 If the services rendered do not meet the requirements of the Agreement, Consultant will correct or modify the work to comply with the Agreement. The City may withhold payment for such work until the work meets the requirements of the Agreement.

**5. Discrimination and Compliance with Laws**

5.1 Consultant agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.

5.2 Consultant and its subconsultants shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.

5.3 Any violation of this Section 5 shall be a material breach of this Agreement and grounds for immediate cancellation, termination, or suspension of the Agreement by the City, in whole or in part, and may result in Consultant's ineligibility to conduct further work for the City.

**6. Suspension and Termination of Agreement**

6.1 The City reserves the right to terminate or suspend this Agreement at any time, without cause, by giving Consultant notice in writing ten (10) days prior to the termination or suspension date. In the event of termination, all finished or unfinished reports, or other material prepared by Consultant pursuant to this Agreement, shall be submitted to the City. In the event the City terminates this Agreement prior to completion without cause, Consultant may complete such analyses and records as may be necessary to place its files in order. Consultant shall be entitled to compensation for any satisfactory work completed on the Project prior to the date of suspension or termination.

6.2 Any notice from the City to Consultant regarding the suspension of this Agreement shall specify the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to Consultant's reasonable expenses and shall be subject to verification. Consultant shall resume performance of services under this Agreement without delay when the suspension period ends.

**7. Standard of Care**

7.1 Consultant represents and warrants that it has the requisite training, skill, and experience necessary to provide the services under this Agreement and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services Consultant provides under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances. . Consultant understands and agrees that the services rendered pursuant to this Agreement are for the sole exclusive benefit of the City and that no

third party shall have authority to authorize, approve, direct or control any of the services rendered to the City pursuant to this Agreement.

## **8. Ownership of Work Product**

8.1 Ownership of the originals of any reports, data, studies, surveys, charts, maps, drawings, specifications, figures, photographs, memoranda, and any other documents which are developed, compiled, or produced as a result of this Agreement, whether or not completed, shall be vested in the City and shall be submitted to the City upon termination of this Agreement. Any reuse of these materials by the City for projects or purposes other than those that fall within the scope of this Agreement and the Project to which it relates, without written concurrence by Consultant, will be at the sole risk of the City.

8.2 The City acknowledges Consultant's documents as instruments of professional service. Nevertheless, the documents prepared under this Agreement shall become the property of the City upon completion of the work. The City agrees to hold harmless and indemnify Consultant against all claims made against Consultant for damage or injury, including defense costs, arising out of the City's reuse of such documents beyond the use for which they were originally intended without the written authorization of Consultant.

8.3 Methodology, software, logic, and systems developed under this Agreement are the property of Consultant and the City, and may be used as either Consultant or the City see fit, including the right to revise or publish the same without limitation.

## **9. Indemnification/Hold Harmless**

9.1 Consultant shall indemnify, and hold the City, its officers, officials, and employees harmless from all reasonable claims, injuries, damages, losses or suits including attorney fees, arising directly or indirectly out of or resulting from the negligent acts, errors, or omissions of Consultant or its sub-consultants in performance of this Agreement, except for injuries and damages caused by the concurrent negligence of the City. Provided, however, that if any such claims, injuries, damages, losses or suits result from the concurrent negligence of Consultant and the city, it is expressly agreed that Consultant's obligations and indemnity under this paragraph shall be effective only to the extent of Consultant's negligence.

## **10. Insurance**

10.1 Consultant shall procure and maintain for the duration of the Agreement, and shall provide proof satisfactory to the City that such insurance is procured and maintained by each of its subconsultants, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Consultant, its agents, representatives, or employees.

10.2 Consultant shall procure and maintain the following types and amounts of insurance:

a. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage. This insurance shall have a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

b. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors, personal injury, and advertising injury. This insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

c. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

d. Professional Liability insurance appropriate to Consultant's profession, with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

10.3 The Automobile Liability, Commercial General Liability, and Professional Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

a. Consultant's insurance coverage shall be primary insurance vis-à-vis the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess over Consultant's insurance and shall not contribute with it.

b. Consultant's insurance shall be endorsed to state that coverage shall not be cancelled, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

10.4 The City shall be named as an additional insured under Consultant's Automobile Liability and Commercial General Liability insurance policies with respect to the work to be performed for the City pursuant to this Agreement.

10.5 Insurance shall be placed with insurers with a current A.M. Best rating of not less than A:VII.

10.6 Declaration pages issued by the insurance carriers for the policies mentioned in this Section 10 showing such insurance to be in force shall be filed with the City not less than ten (10) days following both parties signing this Agreement and before commencement of the work. In addition, the City may request, in writing, a full copy from Consultant of any insurance policy Consultant must procure and maintain pursuant to this Agreement and Consultant must provide such copy to the City within ten (10) days of Consultant's receipt of the City's request. Any policy or required insurance written on a claims-made basis shall provide coverage as to all claims arising out of the services performed under this Agreement and for three (3) years following completion of the services to be performed. It shall be a material breach of this Agreement for Consultant to fail to procure and maintain the insurance required by this Section 10 or to provide the proof of such insurance to the City as provided for in this Agreement.

## 11. Assigning or Subcontracting

11.1 Consultant shall not assign, transfer, subcontract, or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the City, which consent may be withheld at the sole discretion of the City.

**12. Independent Contractor**

12.1 Consultant and its subconsultants are, and shall be at all times during the term of this Agreement, independent contractors.

**13. Notice**

13.1 All notices required by this Agreement shall be considered properly delivered when personally delivered, when received by facsimile, or on the third day following mailing, postage prepaid, certified mail, return receipt requested to:

City: Christy Todd, City Administrator  
City of Black Diamond  
P.O. Box 599  
Black Diamond, WA 98010  
Fax: 360-886-2592

With a copy to: City Attorney  
P.O. Box 599  
Black Diamond, WA 98010

Consultant: BergerABAM  
Attn: Helen Devery  
1311 Main Street, Suite 300  
Vancouver, WA 98660-2958  
Fax: 360-823-6101

**14. Disputes**

14.1 Any action for claims arising out of or relating to this Agreement shall be governed by the laws of the State of Washington. Venue shall be in King County Superior Court, Kent, Washington.

**15. Attorney Fees**

15.1 In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorney fees from the other party.

**16. General Administration and Management on Behalf of the City**

16.1 The City Administrator for the City, or his/her designee( the contract Administrator) shall review and approve Consultant's invoices to the City under this Agreement and shall have primary responsibility for overseeing and approving work or services to be performed by Consultant. . Consultant understands and agrees that any and all work to be performed pursuant to this Agreement must be approved in advance by the contract Administrator. No third party, including the project applicant, shall have any direct control or influence over the services performed under this Contract.

**17. Extent of Agreement/Modification**

17.1 This Agreement, together with any attachments or addenda, represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may only be amended, modified, or added to by written instrument properly signed by both parties. The parties acknowledge the general contract rule that a clause in a contract, such as this one, prohibiting oral modifications is itself generally subject to oral modification. However, in order to ensure certainty as to the terms and conditions of this Agreement, the parties waive this general contract rule.

**18. Conflict of Interest; Non-Collusion**

18.1 No officer, employee or agent of the City, nor any member of the immediate family of any such officer, employee or agent, shall have any personal financial interest, direct or indirect, in this Contract, either in fact or in appearance. The Consultant shall comply with all federal, state, and City conflict of interest laws, statutes and regulations. The Consultant represents that the Consultant presently has no interest and shall not acquire any interest, direct or indirect, in the project to which this Contract pertains which would conflict in any manner or degree with the performance of the Consultant's services and obligations hereunder. The Consultant further covenants that, in performance of this Contract, no person having any such interest shall be employed by the Consultant. The contractor's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from the project applicant or any affiliate or agent of the project applicant.

18.2 The Contractor warrants and represents that the Contractor has not, nor has any other member, employee, representative, agent or officer of the Contractor, entered into or offered to enter into any combination, collusion or agreement with any person or entity to receive or pay, and that he has not received or paid, any sum of money or other consideration for the execution of this Contract other than the consideration offered pursuant to the terms and conditions hereof.

CITY OF BLACK DIAMOND

CONSULTANT

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

Dave Gordon

Its: Mayor

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

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

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

Its: \_\_\_\_\_

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

Attest:

By:

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

Approved as to form:

\_\_\_\_\_  
City Attorney

28 February 2014

Stacey Welsh, Community Development Director  
City of Black Diamond  
24301 Roberts Drive  
P.O. Box 599  
Black Diamond, WA 98010

Subject: Proposal to Provide Consultant Services for 2015 Comprehensive Plan Update

Dear Ms. Welsh:

We are pleased to have the opportunity to submit the following proposal to provide professional planning services relating to the 2015 Black Diamond Comprehensive Plan Update. The comprehensive plan update will include land use, natural resources, capital facilities, transportation, and public outreach services.

#### **PROJECT UNDERSTANDING**

The City of Black Diamond (City) is required to update its comprehensive plan and deliver it to the Washington State Department of Commerce (DOC) by 30 June 2015. This comprehensive plan update will focus on ensuring the plan's continued consistency with the DOC Periodic Update Checklist, with special attention devoted to updates post 2009. BergerABAM understands that portions of the existing comprehensive plan and development regulations are in compliance with DOC standards and others are not. The sections that are currently compliant need to be addressed in the DOC checklist, and the noncompliant sections will require review and revisions to meet the Washington State Growth Management Act (GMA) standards identified in the DOC checklist. BergerABAM understands that the 2009 Comprehensive Plan and Development Regulations are substantially compliant with the current DOC requirements and the update will be focused on making sure that the requirements since 2009 are addressed and updated. As such, BergerABAM will utilize existing data from the 2009 comprehensive plan, and City Council adopted plans and studies (including, but not limited to the 2012 General Sewer Plan, the 2010 Storm and Surface Water Comprehensive Plan, the 2011 Trails Plan, the to-be-adopted General Government and Facilities Mitigation Plan and other Council adopted plans that City staff specify), to provide updates to the 2015 comprehensive plan. Per our draft review of the DOC checklist, we developed Table 1 (on the following page) to document some of the elements and development regulations that need to be updated. We understand that as part of the update process additional components of elements and development regulations listed may need to be updated.

**Table 1: Applicable Draft Department of Commerce Periodic Update Checklist Items**

Comprehensive Plan	BDMC
<p><b>Chapter 4   The Natural Environment</b></p> <ul style="list-style-type: none"> <li>Update text as needed in conjunction with BDMC Title 19 amendments.</li> </ul> <p><b>Chapter 5   Land Use Element</b></p> <ul style="list-style-type: none"> <li>Update future land use map</li> <li>Identify consistent population projections throughout the plan</li> <li>Identify lands for housing and employment</li> <li>Update population densities and building intensities based on future land uses</li> </ul>	<p><b>General GMA Updates</b></p> <ul style="list-style-type: none"> <li>Documentation of existing consistency with county-wide planning policies</li> <li>Documentation that plan elements are consistent with each other</li> <li>Documentation that the plan is coordinated with adjacent jurisdictions</li> <li>Documentation of public participation plan elements</li> </ul>
<p><b>Chapter 7   Transportation Element</b></p> <ul style="list-style-type: none"> <li>Documentation of 10-year forecasted traffic and level of service</li> <li>Documentation of a pedestrian and bicycle component (multi-modal transportation)</li> <li>Documentation of future funding capability and a multi-year financing plan</li> </ul>	<p><b>BDMC Title 17   Divisions of Land</b></p> <ul style="list-style-type: none"> <li>Update subdivision regulations, if needed, to address preliminary subdivision approval valid for five, seven, or nine years.</li> </ul>
<p><b>Chapter 8   Capital Facilities/Utilities/Essential Public Facilities</b></p> <ul style="list-style-type: none"> <li>Document and update the inventory of existing capital facilities owned by public entities</li> <li>Document and update forecast of needed capital facilities</li> <li>Document and update proposed locations and capacities of expanded or new capital facilities</li> <li>Document and update the six-year source of public money to finance planned capital facilities</li> </ul>	<p><b>BDMC Title 19   Sensitive Areas</b></p> <ul style="list-style-type: none"> <li>Confirming the use of Best Available Science in the 2009 regulations</li> <li>Confirming and/or updating text to address mine hazard areas</li> <li>Confirming the regulations to protect the functions and values of wetlands</li> <li>Using the federal wetland delineation manual wetland definition</li> <li>Confirming that the 2009 regulations protect the functions and values of fish and wildlife habitat conservation areas</li> <li>Including text that addresses that fish and wildlife habitat conservation areas do not include artificial features</li> <li>Documentation and updating that the goals and policies of the comprehensive plan are consistent with the to-be-adopted shoreline master program.</li> </ul>

## **SCOPE OF WORK**

### **Task 1. Kickoff Meeting for Comprehensive Plan/ Development Regulation**

Upon client notice to proceed, BergerABAM will develop a project schedule that defines the anticipated landmark dates for the delivery of products, public outreach, and Planning Commission and City Council hearings.

Based on the DOC checklist, BergerABAM's has completed a preliminary assessment of the updates required to the June 2009 City of Black Diamond Comprehensive Plan and Black Diamond Municipal Code to achieve compliance with current state GMA requirements, and these are noted on Table 1. BergerABAM will prepare for and attend one 2-hour project kickoff meeting with the City to further refine the list of comprehensive plan and development regulation updates that are necessary and to further refine the Plan and code updates and project discuss the project schedule. Following the kickoff meeting, BergerABAM will finalize the draft DOC periodic update checklist and project schedule, based on one round of City comments. The final draft DOC checklist will serve as the guide for the work tasks that will be completed and will be provided to DOC by the City to meet the 31 March 2014 DOC grant requirements.

#### *Assumptions*

- The project kickoff meeting will be held at the City's offices.
- The City will coordinate and submit grant status reports to the DOC.
- City staff will provide preliminary project update(s) to the Planning Commission and/or City Council.
- BergerABAM will not attend any Planning Commission or City Council work sessions in Task 1.

#### *Deliverables*

- Preparation for and attendance by BergerABAM planning project manager and capital facilities engineer at one 2-hour City kickoff meeting
- Draft and final DOC periodic update checklist
- Draft project schedule
- Final project schedule

### **Task 2: Public Outreach**

For the public participation work, BergerABAM recommends two community open houses to engage residents and business interests. Additionally, the City will update the community using its website to provide updates to inform the community of the update process. The City will place a notice in the *Voice of the Valley* newspaper, to advertise each community open house. A key component of the public outreach plan will be the public open houses. The first open house is anticipated to be held in late March or early April 2014 and the second will be held prior to a

Planning Commission meeting where draft updates are introduced. Both public open houses will be attended by the BergerABAM project manager, capital facilities engineer, and public involvement specialist, and would be 2 to 3 hours in length. These open houses will allow the community to provide comments on the refined list of proposed amendments to the comprehensive plan and City development regulations, but are not intended to be a formal visioning process.

The first open house will introduce the project, timelines and how the public can participate at each step in the update process. The second open house will provide an opportunity for the public to comment on draft products that are prepared as part of Task 3.

BergerABAM will prepare a process explanation board to be used during the open houses. BergerABAM will complete one round of revisions to the draft explanation board based on City comments. The City will prepare a list of key stakeholders (Planning Commission, City Council, landowners, business owners, state agencies, Tribes, local residents, neighboring jurisdictions, and representatives of community groups, etc.), to invite to the open houses. An open house format will allow a more relaxed and productive environment as opposed to a meeting that looks or feels like a "hearing." BergerABAM will design the format for approval by the City and will facilitate the open houses. The City will provide any required public and special meeting notice(s). BergerABAM will be responsible for preparing a summary of the comments received at the open houses, and making the summary of comments available by the City for posting on the City's website.

Materials presented at the open houses will include, but not be limited to:

- Map of city limits (to be provided by City)
- Process explanation board

#### *Assumptions*

- The City will respond to public and media inquiries.
- The City will be responsible for advertising and public notice for the public open houses.
- The City will be responsible for website updates and newspaper notices.
- The City will identify and reserve the venue(s) for each open house.
- The City will be responsible for meeting logistics, mailings, and associated costs.

#### *Deliverables*

- Preparation for and attendance by three BergerABAM staff at two public open houses
- Preparation of public meeting comment summaries to be uploaded to City's website
- Refreshments, sign-in sheets, and public comment forms
- Process explanation board
- Public participation plan (per DOC grant)

### **Task 3: Comprehensive Plan and Development Regulations Update**

Based on comments received from the community during the public outreach process in Task 2, BergerABAM will further refine the amendments to the comprehensive plan and amendments to all development regulation changes and will provide that documents to City staff in editable form. BergerABAM, with assistance from DKS Associates for transportation work, will then complete the following work. For the comprehensive plan and development regulations update, the BergerABAM team will prepare the comprehensive plan and development regulation documents in strikethrough and underline format to clearly identify the proposed comprehensive plan and development regulation changes. Each new version of comprehensive plan update and development regulation update will be clearly identified as to version number for document tracking purposes. BergerABAM will update the comprehensive plan and development regulations, prepare the DOC checklist responses for the following work, and provide these documents in editable form to the City for one round of review.

### **Land Use Element, General GMA Update and Title 17 Division of Land**

The Chapter 5 Land Use Element work will include updating land use population and housing projections with planned housing and employment areas. BergerABAM will confirm whether the county-wide planning policies are consistent with the 2009 comprehensive plan as well as whether the county-wide planning policies are expected to undergo major amendment during BergerABAM's contract term. BergerABAM will also assure that there is consistency between plan elements. For Title 17 Division of Land, BergerABAM will work with City staff to define preliminary plat vesting periods and to amend city code as necessary.

### **Title 19 Sensitive Areas**

The Title 19 Sensitive Areas work will include minor edits to update to the critical areas ordinance confirming the use of best available science for wetlands and habitat in the 2009 ordinance, updating the definition of wetlands, confirming and/or proposing amendments as necessary regarding mine hazard areas. This work will also include developing a list of comprehensive plan goals and policies showing consistency between the comprehensive plan and the to-be-adopted (in 2014) shoreline master program.

### **Capital Facilities**

More detailed updates will be necessary for the capital facilities and transportation elements and development regulations. This work includes updating the inventory of existing City capital facilities, updating forecasted capital facilities, documenting the proposed location and capacity of proposed facilities, and updating the six year source of public money to finance capital facilities using data from authorized City staff. It is assumed that a detailed system and programmatic analysis will not be implemented to complete this work, and that the to-be-adopted General Government Facilities Mitigation Fee Plan can be utilized to inform this work.

BergerABAM will update the capital facilities portion of the comprehensive plan and development regulations, including utilities, parks and recreation, and public services. The update will rely upon the following background materials:

- Transportation Improvement Plan – Adopted by the City Council July 2013
- General Sewer Plan – Adopted by the City Council December 2012
- Water System Comprehensive Plan – Adopted by the City Council December 2009, and to be updated again in 2015
- Storm and Surface Water Comprehensive Plan – Adopted by the City Council July 2010
- Trails Plan – Adopted by the City Council December 2011
- Parks, Recreation, and Open Space – Adopted by the City Council December 2008, and to be updated again in 2015
- Fire Impact Fee
- General Government Facilities Mitigation Fee Plan – to be adopted by City Council 2014

Following review of the source material, BergerABAM will evaluate the reference material, update the comprehensive plan and development regulations, and provide these updates to the City for one round of review as noted above. Specifically, we will work with City staff to evaluate the implementation and finance schedules for capital projects and facilities. Review of the reference material will focus specifically on the following.

- Updating implementation schedules to align with the current status of proposed projects, and improve schedule implementation, where necessary, based upon changes since the adoption of the 2009 Comprehensive Plan.
- Evaluating potential opportunities to coordinate elements of capital facility investment to reduce individual project costs and increase added value.
- Updating financing and project estimates to account for inflation, using data provided by authorized City staff.

### **Transportation**

The Transportation Element work will include documentation of 10-year forecasted traffic and level of service, documentation of the required pedestrian and bicycle component (multi-modal transportation), and documentation of future funding capability and a multi-year financing plan. The BergerABAM team will review the following background materials and assemble the relevant transportation information:

- 2009 Black Diamond Comprehensive Plan
- City of Black Diamond Transportation Improvement Plan – Adopted by City Council July 2013

As part of the DOC checklist, the team will highlight areas where the existing plan has deficiencies that need to be addressed in the Transportation Element update. The City will provide a summary of key transportation issues to be considered, including the need to conduct updated transportation counts and to consider the need for new roadways to the 2025 planning horizon, and the team will suggest approaches to address these issues in the update.

The traffic data, analysis, findings, and recommendations identified by the BergerABAM team, combined with input from City staff and the project team will be used to:

- Forecast traffic volumes for the year 2025 or beyond.
- Determine state and local system needs to meet current and future demand.
- Identify specific projects to bring local transportation facilities and services to established or amended level of service standards.
- Determine pedestrian and bicycle (multi-modal transportation) needs and projects.
- Identify project funding sources and update the financing forecast for transportation planning.
- Prepare responses to the DOC Periodic Checklist related to transportation

The BergerABAM team will review current city municipal code pertaining to the local transportation system and highlight deficiencies, and will coordinate with the City to confirm key transportation issues to be addressed. As part of the Transportation Element update, DKS Associates will suggest approaches to address these issues in the update. The recommendations will identify specific policies needed to implement the Transportation Element.

The transportation analysis will include an update to the Transportation Element and municipal code and documentation in the DOC checklist. DKS Associates will complete the transportation and municipal code revisions and will provide this information to the City for one round of comments. Once comments are received from the City, the final version will be prepared. The DKS traffic consultants will participate in project team conference calls for coordination and discussions

### **Work Sessions and Hearings Process**

BergerABAM, working with City staff, will facilitate review of the draft updates by the Planning Commission and City Council. City staff will prepare the staff report for meetings with the Planning Commission and City Council, utilizing deliverables as specified in this Task.

Based on input from the Planning Commission and City Council, BergerABAM will update the comprehensive plan and development regulations in strikethrough and underline format to clearly identify the proposed comprehensive plan and development regulation changes. All proposed development regulation changes will also be documented and provided in tabular format for ease of review by City staff, the public, and the Planning Commission and City Council. In addition to the comprehensive plan text edits, it is expected that BergerABAM will prepare necessary geographic information system (GIS) maps in conjunction with the plan update.

BergerABAM will provide a first draft MS Word document of the comprehensive plan and development regulations to City staff for review. Following the receipt of edits from City staff, BergerABAM will prepare a second draft of the plan and development regulation updates for introduction to Planning Commission and/or City Council.

The BergerABAM team will prepare State Environmental Protection Act (SEPA) documents during the preparation of the final comprehensive plan and development regulations update.

Consistent with Washington Administrative Code 197-11-210(3), environmental analysis should occur “at each stage of the GMA planning process” and “at a minimum address the environmental impacts associated with the planning decisions at that stage of the planning process.” As such, the proposed comprehensive plan and development regulation amendments constitute an agency action that triggers review under SEPA. It is expected that the SEPA documentation provided with this effort will be a non-project SEPA action. An addendum was completed as the prior SEPA documentation prepared by the City for the 2009 comprehensive plan update, and BergerABAM will work with City staff to determine the appropriate SEPA documents. The City staff will act as the lead agency, will issue the SEPA decision, and will complete the notice process. The project is not anticipated to result in the need for an environmental impact statement (EIS).

After completion of the SEPA documents, BergerABAM and City staff will facilitate review and approval of the updates by the Planning Commission and City Council in the scheduling of public hearings to gain input and acceptance on the proposed comprehensive plan and regulation updates. City staff will prepare the staff reports and exhibits for the Planning Commission and City Council hearings, using deliverables provided by BergerABAM. It is expected that the Planning Commission will recommend changes to the final comprehensive plan and development regulations before it proceeds to the City Council, and that BergerABAM will prepare a hearings summary. BergerABAM will complete one round of updates to the comprehensive plan and development regulation after the Planning Commission public hearing to ensure that all Planning Commission recommendations are incorporated into the final draft proposal presented to the City Council. Once the 60-day notice of intent to adopt has been completed, a City Council public hearing will occur.

#### **Department of Commerce Approval Process & Puget Sound Regional Council (PSRC)**

The 60-day notice of intent to adopt the comprehensive plan and development regulations will be provided to the DOC by the City. Following incorporation of DOC input, a City Council public hearing will be scheduled. The City will manage all coordination with the DOC. BergerABAM and City staff will prepare the staff report and facilitate the presentation to the City Council. Based on City Council input following the public hearing, BergerABAM will make final comprehensive plan and development regulation edits, finalize the GIS maps, and provide final documents to the City for publication. To conclude the process, BergerABAM will finalize the DOC periodic update checklist and will provide it to the City for submittal to the DOC along with final grant status reports. It is anticipated that the City will prepare the final adoption ordinance for the update process. BergerABAM will complete any required PSRC plan update documentation with one round of City review and comment. The City will submit materials to PSRC.

#### **Project Meetings**

It is anticipated that BergerABAM planning staff will meet with or hold teleconferences with the client up to eight times during Task 3. It is expected that two meetings will occur in the City of

Black Diamond prior to the public workshops, noted in Task 2. Up to six additional meetings are anticipated to occur via teleconference or in person throughout the remainder of the completion of Task 3. BergerABAM will complete summary meeting notes from team meetings and teleconferences. Additionally, ongoing phone calls and e-mail communication will occur throughout the project. BergerABAM will prepare and distribute conference call summaries, consisting of major topics discussed and action items.

### *Assumptions*

- Comprehensive plan and development regulation changes will be processed together and will not require separate Planning Commission and City Council hearings. Separate ordinances will be prepared for:
  - A. Comprehensive Plan amendments; and
  - B. Each amendment to a chapter of the Black Diamond Municipal Code.
- The City will provide all comprehensive plan, capital facilities plan, development regulations, approved master plan information, other City Council adopted plans, past SEPA documents and checklists electronically (in MS Word format if available).
- City staff will act as the SEPA lead agency and will issue the threshold determination for the project.
- A supplemental EIS will not be required.
- Eight meetings will occur with City staff throughout the course of Task 3. Two meetings will be held at the City prior to the public workshop. Another six meetings will occur via teleconference or will be in person meetings, depending upon the needs and preferences of the City.
- One round of initial City staff review will occur for the comprehensive plan and development regulations.
- The City will prepare and submit the grant reports to the DOC.
- The City will provide available GIS data to BergerABAM for the production of GIS graphics.
- BergerABAM will prepare and distribute conference call summary documentation.
- City staff will prepare the staff reports and exhibits for the Planning Commission and City Council work sessions and hearings, utilizing deliverables from BergerABAM.
- The City will be responsible for distribution of materials to the Planning Commission and City Council.
- One round of revision of comprehensive plan and development regulations will occur after the planning commission hearing.
- One round of revision of the comprehensive plan and development regulations will occur after the DOC 60 day review.
- The City will prepare the final adoption ordinances for the update process, utilizing deliverables from BergerABAM.
- One electronic and one hard copy of draft and final comprehensive plan and development regulations will be provided to the City.

*Deliverables*

- Preparation for and attendance at two in-person and six teleconference or in person meetings with City staff
- Draft DOC checklist to City staff
- Final DOC checklist to City staff
- Draft and final PSRC checklist
- Draft comprehensive plan edits
- Draft development regulation edits
- Up to six GIS maps in digital format
- Preparation of draft and final SEPA documents and environmental checklist
- Preparation for and attendance by the project manager and capital facilities engineer at one Planning Commission and one City Council work session
- Preparation for and attendance by the project manager and capital facilities engineer at one Planning Commission hearing
- Preparation for and attendance by the project manager and capital facilities engineer at one City Council hearing
- Preparation for and attendance by the project manager at one final City Council meeting for adoption of the plan and development regulations
- Comprehensive plan and development regulation edits following Planning Commission & City Council hearings
- Final comprehensive plan and development regulation revisions distributed to City
- Final DOC Checklist
- One electronic and one hard copy of draft and final comprehensive plan and development regulations

**FEE**

The following professional fees, including an estimated \$567.00 in expenses, will be billed as incurred and will not exceed \$82,506.00 without written authorization from the Black Diamond City Council.

Task 1.0:	\$ 6,270
Task 2.0:	9,031
Task 3.0:	67,205
Expenses:	<u>567</u>
Total:	<u>\$82,506</u>

# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
<b>SUBJECT:</b> <b>AB14-033</b> <b>Amending section 2.04.010 of the Black Diamond Municipal Code regarding Council meeting dates in accordance with Ordinance No. 14-1022</b>	<b>Agenda Date: March 6, 2014</b>	
	<b>AB14-033</b>	
	Department/Committee/Individual	
	Mayor Dave Gordon	
	City Administrator –Christy Todd	X
	City Attorney –	
	City Clerk – Brenda L. Martinez	
	Finance – May Miller	
	Natural Resources/Parks – Aaron Nix	
	PW/Ec. Dev. – Andy Williamson	
Police – Jamey Kiblinger		
Court – Stephanie Metcalf		
Comm. Dev. – Stacey Welsh		
Cost Impact: N/A		
Fund Source:		
Timeline:		
<b>Agenda Placement:</b> <input type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input checked="" type="checkbox"/> City Administrator		
<b>Attachments: Ordinance No. 14-1022</b>		
<p><b>SUMMARY STATEMENT:</b></p> <p>The proposed ordinance is presented to Council so that a regular work session can be scheduled each month. Currently, the City Council is scheduling Special Meetings on a regular basis in order to address matters that require in-depth Council review. To set a regular date and time each month for a work session would allow for greater flexibility because any time a Special Meeting is scheduled, state law governs what can be discussed at that meeting, and how the meeting must be called.</p> <p>The proposed ordinance would establish the second Thursday each month, beginning at 7:00 PM, for purposes of a work session. When the work session is finished, then the town hall meeting would begin.</p> <p>I am not recommending that Council schedule a fourth meeting each month; rather, I am recommending that the work session be a regularly scheduled meeting that occurs each month, followed by the town hall meeting, on the second Thursday. If there is no need for a work session, it can be cancelled at the beginning of the meeting and the town hall meeting can begin. Conversely, if the work session is lengthy, the Council can, by motion, cancel or shorten the length of the Town Hall meeting.</p> <p>The other proposed revisions are to remove old references (to 1998) that are no longer necessary.</p>		
<b>COMMITTEE REVIEW AND RECOMMENDATION:</b> This ordinance was discussed with the Finance, Budget and Administration Committee on Thursday, February 27, 2014.		

RECOMMENDED ACTION: **MOTION to adopt Ordinance No. 14-1022, relating to Council meeting dates and locations, and amending Black Diamond Municipal Code 2.04.010, Meetings.**

**RECORD OF COUNCIL ACTION**

<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
March 6, 2014		

# CITY OF BLACK DIAMOND WASHINGTON

ORDINANCE NO. 14-1022

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**AN ORDINANCE OF THE CITY OF BLACK DIAMOND,  
WASHINGTON, RELATING TO COUNCIL MEETING  
DATES AND LOCATIONS; AMENDING 2.04.010,  
MEETINGS OF THE BLACK DIAMOND MUNICIPAL  
CODE; PROVIDING FOR SEVERABILITY; AND  
ESTABLISHING AN EFFECTIVE DATE**

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**WHEREAS**, the City Council desires to schedule a work session each month followed by a town hall meeting;

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

Section 1. Amending BDMC 2.04.010 (Meetings). Section 2.04.010 of the Black Diamond Municipal Code is hereby amended (*amendments shown in legislative revision marks*) to read as follows:

The regular meetings of the city council of the city shall be held at the Black Diamond Municipal Building, 25510 Lawson Street, Black Diamond, King County, Washington, on the first and third Thursdays of each month at the hour of seven p.m. A work session of the city council followed by a town hall meeting shall be held at the Black Diamond Municipal Building, 25510 Lawson Street, Black Diamond, King County, Washington, on the second Thursday of each month at the hour of seven p.m.

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

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

**ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON  
THE 6TH DAY OF MARCH, 2014.**

CITY OF BLACK DIAMOND

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Dave Gordon, Mayor

ATTEST/AUTHENTICATED:

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Brenda L. Martinez, City Clerk

Approved as to form:

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City Attorney

Approved as to form:

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Stephen P. DiJulio  
Interim City Attorney

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

# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
<b>SUBJECT:</b> <b>AB14-034</b> <b>Opposing a ballot measure by King County to assess a \$60 vehicle tab free and a 0.1% sales and use tax on King County residents in accordance with proposed Resolution No. 14-937</b>	<b>Agenda Date: March 6, 2014</b>	
	<b>AB14-034</b>	
	Mayor Dave Gordon	
	City Administrator Christy Todd	<b>X</b>
	City Attorney P. Stephen DiJulio	
	City Clerk – Brenda L. Martinez	
	Community Development – Stacey Welsh	
	Finance – May Miller	
	Economic Development – Andy Williamson	
	Parks/Natural Resources – Aaron Nix	
Police – Chief Kiblinger		
Public Works – Seth Boettcher		
Court Administrator – Stephanie Metcalf		
Cost Impact (see also Fiscal Note):		
Fund Source:		
Timeline:		
<b>Agenda Placement:</b> <input type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input checked="" type="checkbox"/> City Administrator		
<b>Attachments: Resolution No. 14-937</b>		
<b>SUMMARY STATEMENT:</b>  At the February 20, 2014 regular business meeting of the City Council a motion was made and passed directing staff to draft a resolution to King County that disagrees with the County-wide Transportation Benefit District. The proposed resolution is in accordance with that direction.		
<b>FISCAL NOTE (Finance Department):</b> N/A		
<b>COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:</b>		
<b>RECOMMENDED ACTION: MOTION to adopt Resolution No. 14-937, opposing a ballot measure by King County to assess a \$60 vehicle tab fee and a 0.1% sales and use tax on King County residents.</b>		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
March 6, 2014		

**RESOLUTION NO. 14-937**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON OPPOSING A BALLOT MEASURE BY KING COUNTY TO ASSESS A \$60 VEHICLE TAB FEE AND A 0.1% SALES AND USE TAX ON KING COUNTY RESIDENTS**

**WHEREAS**, in accordance with RCW 42.17A.555 the Black Diamond City Council held a public hearing on February 20, 2014 regarding King County Transportation District Resolution 2014-003 to hear from those in support of and in opposition to a ballot measure on the April 22, 2014 ballot before King County registered voters, as proposed by the Transportation District and King County to assess a \$60 vehicle tab fee and a 0.1% sales and use tax on King County residents, with 60% of the revenues to be used by King County and 40% to be distributed to cities within King County on a per capita basis; and

**WHEREAS**, persons in support of and opposed to the ballot measure under Resolution 2014-003 offered testimony either submitted in writing, or in person at the February 20, 2014 public hearing; and

**WHEREAS**, the Black Diamond City Council considered Resolution 2014-003 and King County Council Resolution 2014-0059, and the comments and testimony, and directed City staff to bring a Resolution forward in opposition to the ballot measure to impose a \$60 vehicle tab fee and a 0.1% sales and use tax on King County residents;

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

**Section 1.** The City Council of Black Diamond is opposed to and does not support the ballot measure under King County Transportation District Resolution 2014-003 to assess a \$60 vehicle tab fee and a 0.1% sales and use tax.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 6<sup>TH</sup> DAY OF MARCH, 2014.**

CITY OF BLACK DIAMOND:

\_\_\_\_\_  
Dave Gordon, Mayor

Attest:

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



**KING COUNTY**

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**Signature Report**

**March 5, 2014**

**TD Resolution**

**Proposed No.** TD2014-03.1

**Sponsors**

1           A RESOLUTION of the King County transportation  
2           district relating to financing transportation improvements;  
3           submitting a ballot measure regarding transportation  
4           funding to the qualified electors of the King County  
5           transportation district at a special election to be held on  
6           April 22, 2014, and submitting a proposition to district  
7           voters to authorize the district to fix and impose a one-tenth  
8           of one percent sales and use tax within the district and a  
9           sixty dollar vehicle fee on all vehicles within the district to  
10          finance transportation improvements; requesting that the  
11          King County prosecutor prepare a ballot title for the  
12          proposition; and appointing committees to prepare the pro  
13          and con statements for the local voters' pamphlet.

14          WHEREAS, in the last several years, new transportation challenges have emerged  
15          affecting the funding of transportation improvements for King County Metro transit and  
16          all King County cities and unincorporated King County, including a prolonged recession,  
17          and declined gas-tax, property tax, and sales tax revenues, and

18          WHEREAS, chapter 36.73 RCW, provides for the establishment of transportation  
19          benefit districts by cities and counties and authorizes those districts to levy and impose

20 various taxes and fees to generate revenues to support transportation improvements that  
21 benefit the district and that are consistent with state, regional or local transportation plans  
22 and necessitated by existing or reasonably foreseeable congestion levels, and

23 WHEREAS, King County Ordinance 17746 established the King County  
24 transportation district with the authority to fund, acquire, construct, operate, improve,  
25 provide, maintain and preserve transportation improvements authorized by chapter 36.73  
26 RCW, and

27 WHEREAS, the King County transportation district intends to fund transportation  
28 improvements authorized by chapter 36.73 RCW and that local jurisdictions receiving  
29 funding will directly acquire, construct, operate, maintain, preserve or otherwise provide  
30 any transportation improvement authorized by chapter 36.73 RCW and consistent with  
31 this resolution, and

32 WHEREAS, the King County Transportation District has the legal authority to fix  
33 and impose up to a one hundred dollar vehicle fee under RCW 82.80.140 with approval  
34 of a majority of district voters, and

35 WHEREAS, the King County Transportation District has the legal authority to fix  
36 and impose up to a two-tenths of one percent sales and use tax within the district under  
37 RCW 82.14.0455 with approval of a majority of district voters, and

38 WHEREAS, a voter-approved vehicle fee imposed by the King County  
39 transportation district does not affect the authority of city-established transportation

40 benefit districts to impose up to a twenty dollar councilmanic vehicle fee under RCW  
41 82.80.140, and

42 WHEREAS, the King County Transportation District cannot impose a voter  
43 approved sales and use tax that exceeds a period of ten years, unless extended by an  
44 affirmative public vote in accordance with RCW 82.14.0455;

45 BE IT RESOLVED BY THE KING COUNTY TRANSPORTATION  
46 DISTRICT:

47 SECTION 1. Fee and tax submittal to voters. To provide necessary funding for  
48 the transportation improvements identified in section 3 of this resolution, the King  
49 County transportation district shall submit to the qualified electors of the district a  
50 proposition authorizing the district to fix and impose, for ten years, a sixty-dollar vehicle  
51 fee to be added to any existing fees and to fix and impose, for ten years, an additional  
52 one-tenth of one percent sales and use tax.

53 SECTION 2. Distribution of revenues. The district sales and use tax and  
54 vehicle fee revenues shall first pay any administrative costs to the state Department of  
55 Licensing and state Department of Revenue, the administrative costs of the district and  
56 the cost of the license fee low-income rebate program in section 4 of this resolution. The  
57 remaining combined revenue will be distributed pursuant to interlocal agreements for use  
58 for transportation improvements consistent with this resolution in the following manner:

59 A Sixty percent distributed to King County. On a biennial basis, the Board shall  
60 determine and allocate for Metro transit purposes the amount of the sixty percent

61 distribution necessary to fund the operation, maintenance and capital needs of the Metro  
62 transit system. In making this determination and allocation the Board shall be guided by  
63 the following criteria:

64           1. Preserving Metro transit service at levels comparable to the 2014 Metro transit  
65 system;

66           2. Covering the costs of administering any low income fare program and the  
67 amount of the reduction in fare revenue resulting from a \$1.50 low-income fare; and

68           3. Adjusting for any changes in the amount of other Metro transit revenues  
69 above the revenues estimated in the adopted King County 2013-2014 biennial budget.

70 If as a result of this determination and allocation, there are remaining revenues from the  
71 sixty percent distribution, these will be distributed fifty percent for Metro transit purposes  
72 and fifty percent for unincorporated area road purposes. Attachment A titled Estimated  
73 Distributions of King County Transportation District Revenues to this resolution  
74 illustrates estimated distributions using these criteria, based on currently projected  
75 revenues and expenditures; and

76           B. Forty percent distributed to the cities within King County and to King County  
77 for city transportation improvement purposes and for county unincorporated area road  
78 purposes, respectively, in amounts shared pro rata based on each jurisdiction's percentage  
79 of the total population of jurisdictions entering into interlocal agreements with the district  
80 for the distribution of revenues.

81            **SECTION 3. Use of revenues and description of transportation**

82            **improvements.**

83            A. The sales and use tax and vehicle fee revenues, less the administrative and  
84 rebate program costs identified in Section 2 of this resolution, shall be used by the district  
85 consistent with RCW chapter 36.73 and this resolution to fund transportation  
86 improvements permitted by RCW chapter 36.73, including but not limited to, the  
87 acquisition, construction, operation, improvement, provision, maintenance, and  
88 preservation of public transportation facilities, services and programs, and roads.

89            B. Specifically, the transportation improvements carried out with the sales and  
90 use tax and vehicle fee revenues must be projects or programs contained in the  
91 transportation plan of the Puget Sound Regional Council, King County or a city within  
92 King County that are:

- 93            1. The provision of Metro transit public transportation services;
- 94            2. The service planning and public engagement for the provision of Metro  
95 transit public transportation services;
- 96            3. The operation, maintenance and repair of Metro transit vehicles, equipment  
97 and facilities;
- 98            4. The acquisition and replacement of Metro transit vehicles and equipment and  
99 the planning, design, construction and implementation of Metro transit capital  
100 improvements;
- 101           5. The implementation of transportation demand management programs;

102           6. The planning, design, construction and implementation of capital  
103 improvement, preservation and restoration projects for road facilities such as streets,  
104 roads, bridges, signals, guardrails, drainage systems, pedestrian and bicycle pathways and  
105 related facilities and improvements;

106           7. The operation, maintenance and repair of road facilities such as streets, roads,  
107 bridges, signals, guardrails, drainage systems, bicycle pathways and related facilities and  
108 improvements;

109           8. The provision of emergency responses to protect road facilities and public  
110 health and safety; or

111           9. The planning, design, installation and management of intelligent  
112 transportation systems including traffic cameras, control equipment and new technologies  
113 to optimize the existing transportation system.

114           C. Consistent with RCW 36.73.020, the transportation improvements carried out  
115 with the sales and use tax and vehicle fee revenues shall be needed by existing or  
116 reasonably foreseeable congestion levels; and selection of the transportation  
117 improvements shall, to the extent practicable, consider the following criteria:

118           1. Reduced risk of transportation facility failure and improved safety;

119           2. Improved travel time;

120           3. Improved air quality;

121           4. Increases in daily and peak period trip capacity;

- 122           5. Improved modal connectivity;
- 123           6. Improved freight mobility;
- 124           7. Cost-effectiveness of the investment;
- 125           8. Optimal performance of the system through time;
- 126           9. Improved accessibility for, or other benefits to, persons with special
- 127 transportation needs.

128           SECTION 4. The vehicle fee shall be subject to a rebate program consistent with

129 chapter 36.73 RCW under which low-income individuals will be eligible, upon

130 application, to receive a twenty-dollar rebate for each vehicle for which an individual

131 pays the full vehicle fee.

132           SECTION 5. On an annual basis, the board of the district shall review the

133 identification of projects and programs carried out by King County and the cities within

134 King County with the sales and use tax and vehicle fee revenues for consistency with this

135 resolution. Additionally, the district shall issue an annual report to the public, indicating the

136 status of transportation improvement costs, transportation improvement expenditures, revenues,

137 and construction schedules.

138           SECTION 6. If the Washington state legislature enacts legislation that grants new

139 authorization for county transportation revenues and King County imposes and collects revenues

140 under such legislation, the board shall consider whether to, and may, reduce or eliminate the

141 continued imposition and collection of the sales and use tax and vehicle fee authorized by this

142 resolution.

143            SECTION 7. For the purposes of defining a transportation plan under chapter  
144 36.73 RCW and section 3 of this resolution:

145            A. The transportation plan of King County includes, as adopted and updated, the  
146 Transportation Element of the King County Comprehensive Plan, the King County Metro  
147 Transit Strategic Plan for Public Transportation, the King County Metro Transit Service  
148 Guidelines, the annual King County Metro Transit Service Guidelines Report, the King  
149 County Department of Transportation Strategic Plan for Road Services, the  
150 Transportation Needs Report, and the King County Roads Services CIP.

151            B. The transportation plan of a city is its transportation program adopted and  
152 annually revised and extended as required by RCW 35.77.010.

153            C. The transportation plan of the Puget Sound Regional Council is its  
154 transportation improvement program developed and updated as required by RCW  
155 47.80.023.

156            SECTION 8. For the purposes of this resolution, "city" means city or  
157 incorporated town.

158            SECTION 9. Call for special election. The district hereby requests that the King  
159 County director of elections call a special election on April 22, 2014, to consider a  
160 proposition authorizing the district to fix and impose, for ten years, a vehicle fee in the  
161 amount of sixty dollars and to fix and impose, for a term of ten years, a sales and use tax  
162 in the amount of one-tenth of one percent for the purposes described in this resolution.  
163 The King County director of elections shall cause notice to be given of this resolution in

164 accordance with the state constitution and general law and to submit to the qualified  
165 electors of the district, at the said special county election, the proposition hereinafter set  
166 forth, in the form of a ballot title substantially as follows:

167 KING COUNTY TRANSPORTATION DISTRICT

168 PROPOSITION NO. \_\_\_\_

169 The Board of the King County Transportation District passed Resolution No. TD2014-03  
170 concerning funding for Metro transit, roads and other transportation improvements. If  
171 approved, this proposition would fund, among other things, bus service, road safety and  
172 maintenance and other transportation improvements in King County cities and the  
173 unincorporated area. It would authorize the district to impose a sales and use tax for a  
174 term of ten years of 0.1% under RCW 82.14.0455, and an annual vehicle fee of sixty  
175 dollars (\$60) per registered vehicle under RCW 82.80.140 with a twenty dollar (\$20)  
176 rebate for low-income individuals.

177 Should this sales and use tax and vehicle fee be approved?

178 Yes

179 No

180 SECTION 10. The King County director of elections is hereby requested to  
181 prepare and distribute a local voters' pamphlet, in accordance with K.C.C. 1.10.010, for  
182 the special election called for in this resolution, the cost of the pamphlet to be included as  
183 part of the cost of the special election.

184            SECTION 11. RCW 29A.32.280 provides that for each measure from a  
185 jurisdiction that is included in a local voters' pamphlet, the legislative authority of that  
186 jurisdiction shall formally appoint a committee to prepare arguments advocating voter  
187 approval of the measure and a committee to prepare arguments advocating voter rejection  
188 of the measure.

189            SECTION 12. As authorized by RCW 29A.32.280, the following individuals are  
190 appointed to serve on the voters' pamphlet committees, each committee to write a  
191 statement for or against the proposed measure.

192	FOR	AGAINST
193	1. Denis Hayes	1. Will Knedlik
194	2. Estela Ortega	2. Dick Paylor
195	3. John Marchione	3. Jerry Galland

196            SECTION 13. Ratification. Certification of the proposition by the clerk of the  
197 district to the King County director of elections in accordance with law before the  
198 election on April 22, 2014, and any other act consistent with the authority and before the  
199 effective date of this resolution are hereby ratified and confirmed.

200            SECTION 14. Severability. If any provision of this resolution or its application  
201 to

202

203 any person or circumstance is held invalid, the remainder of the resolution or the  
204 application of the provision to other persons or circumstances is not affected.

205

TD Resolution TD2014-03 was introduced on and passed as amended by the King County Transportation District on 2/24/2014, by the following vote:

Yes: 9 - Mr. Phillips, Mr. von Reichbauer, Mr. Gossett, Ms. Hague,  
Ms. Lambert, Mr. Dunn, Mr. McDermott, Mr. Dembowski and Mr.  
Upthegrove  
No: 0  
Excused: 0

KING COUNTY TRANSPORTATION  
DISTRICT  
KING COUNTY, WASHINGTON

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Larry Phillips, Chair

ATTEST:

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Anne Noris, Clerk of the Board

**Attachments:** A. Estimated Distributions of King County Transportation District Revenues 2-24-14