

City Update

For weeks ending: June 27 through July 4

City Council	Mayor & City Administrator
<p><u>Position 1:</u> Deady</p> <p><u>Position 2:</u> Morgan 6/28 – Land Management Practices Meeting 6/28 – Met with Public 7/1 – Planning Committee Meeting 7/1- Met with Mayor</p> <p><u>Position 3:</u> Edelman 6/29 – Finance Committee Meeting 6/30 – Finance Committee Meeting 7/1 – Planning & Community Service Meeting</p> <p><u>Position 4:</u> Benson 6/30 – Finance Committee Meeting</p> <p><u>Position 5:</u> Taylor</p>	<p><u>Mayor's Activities</u> 6/29 – Finance Committee Meeting 6/30 – Finance Committee Meeting</p> <p><u>City Administrator's Activities</u></p>

Council Commissions, Boards & Committees

- Budget, Finance and Administration Committee. Meeting date: Next meeting: June 12, 2014 4:00 PM . Meeting time: 4:00 PM. Staff support: May Miller.
- Planning and Community Service Committee. Meeting date: June 3, 2014. (Meets the first Tuesday of the month.) Meeting time: 4:00. Staff support: Stacey Welsh.
- Cemetery and Parks Committee. Meeting date: January 9, 2014. Meeting time: 10:00 AM. Staff support: Aaron Nix.
- Public Works Committee. Meeting date: _____, 2014. Meeting time: _____. Staff support: Seth Boettcher.
- Public Safety Committee. Meeting date: _____, 2014. Meeting time: _____. Staff support: Chief Kiblinger.

Community Development Activities

- Performed 24 inspections
- Received applications for: 3 mechanical, 1 plumbing, 1 single family alteration, 2 public works permits for new single family connections.
- Issued 1 plumbing permit.
- Completed 4 permit reviews

Planning Commission:

- Next meeting 6-10-14.

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

Status of Active Capital Improvement Projects

Springs Project: Administration, Public Works Committee, and Council @ CIP workshop agreed with the consultant's recommendation to tap the artesian spring on the north side of the Green River. Next steps:

- Preliminary design
- Negotiate scope and fee with RH2 ; Met With State Parks to determine requirements and process
- Review scope and fee with funding partners
- Call for funds to cover the next element of work
- Bring contract to the council for approval

Abrams Guard Rail: SEPA process complete; Coordination with Century Link; Project out to bid.

½ Mil Tank Painting: Phase 1 to take tank off line moving forward; Meeting to discuss decision information needed for possible deferral.

Old Sewer Lagoon Decommissioning. Soil samples taken from site where bio solids to be are in. preparing SEPA document. Started Nitrogen application rate for bio-solids application.

Downtown Water Main Project: Considering RFQ for engineer selection. Grant agreement expected in July.

Roberts Drive Reconstruction at Rock Creek Bridge: Legal says that we need to go through an updated consultant selection process.

Lawson Street Sidewalk Project: Project to bid next week, bid opening July 7th, bid award mid July, Notice to proceed early August

SR 169 / North Commercial Storm Pond In design

Morganville Sewer Pump Station Reconstruction The repaired pump station should be reliable till fall. The project will be scheduled for this fall.

Council Chambers Remodel: audience chairs are in.

- Sheet rock / brick wall covering planned for the last week in July and first week of August,
- Carpet In August,
- Council bench: RFP going out next week. Installation in September
- Audio visual: IT is recommending large flat panel with gateway access for presentations
- IF there is budget new council chairs will be purchased.

Summer asphalt patching: Bids are out, contract in July, work in August and or September.

Ginder Creek Trail/Regional Pond: Study completed by Landau Associates. Reviewed by the Parks/Cemetery Committee at their June 19th meeting.

General Administrative Activities

- Pet licenses issued: 2; 34 year-to-date; website updates 46; 205 year-to-date; passports processed 51; 487 year-to-date; business licenses issued: 15; 355 year-to-date. Lake Sawyer parking permits issued: 2; 12.
- Received submittals from _____ for _____ services.
- Other:

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 Enumclaw School District calendar at: www.enumclaw.wednet.edu
- 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 2013 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



CITY OF BLACK DIAMOND
July 17, 2014 Regular Business Meeting Agenda - REVISED
25510 Lawson St., Black Diamond, Washington

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

PUBLIC COMMENTS: Persons wishing to address the City Council regarding items of new business are encouraged to do so at this time. When recognized by the Mayor, please come to the podium and clearly state your name and address. Please limit your comments to 3 minutes. If you desire a formal agenda placement, please contact the City Clerk at 360-886-5700. Thank you for attending.

PUBLIC HEARINGS:

- 1) **AB14-066** – Proposed Ordinance Amending BDMC regarding Development Agreements Ms. Morris
- 2) **AB14-067** – Proposed Ordinance Amending BDMC re: SEPA Codes Ms. Morris

(Possible Council action may follow the public hearings)

APPOINTMENTS, PRESENTATIONS, ANNOUNCEMENTS:

Presentation – Active Shooter - Chief Kiblinger

UNFINISHED BUSINESS: None

NEW BUSINESS:

- 3) **AB14-068**– Resolution Authorizing Purchase of Active Shooter Equipment Chief Kiblinger
- 4) **AB14-069** – Resolution Authorizing Consultant Services Contract with Parametrix Mr. Williamson

DEPARTMENT REPORTS: None

MAYOR’S REPORT:

COUNCIL REPORTS:

A. Council Standing Committees and Regional Committees

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

ATTORNEY REPORT:

PUBLIC COMMENTS:

CONSENT AGENDA:

5) **Minutes** – Council Minutes of June 19, 2014 regular and special meetings.

EXECUTIVE SESSION:

To discuss with legal counsel two items of pending litigation pursuant to RCW 42.30.110(1)(i)

ADJOURNMENT:

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: AB14-XXX PUBLIC HEARING Ordinance, amending the Black Diamond Municipal Code provisions relating to Development Agreements.	Agenda Date: July 17 , 2014	
	AB14-XXX	
	Mayor Dave Gordon	
	City Administrator	
	City Attorney Carol Morris	
	City Clerk – Brenda L. Martinez	
	Community Development –	
	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:	Public Works – Seth Boettcher	
Timeline:	Court Administrator – Stephanie Metcalf	
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: Ordinance No. 14-XXXX, RCW 36.70B.170, BDMC Ch. 18.66		
SUMMARY STATEMENT: State law, RCW 36.70B.170(1), authorizes a city to enter into a development agreement with a person having ownership or control of real property within its jurisdiction. The City code contains provisions related to Development Agreements in BDMC Chapter 18.66. The City Attorney has advised that the code be amended to be more consistent with state law. Staff is looking for policy direction from the Council regarding the number of years as shown in placeholders “_____ () years” on pages 2 and 4 of the ordinance. FISCAL NOTE (Finance Department): N/A		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: Discussion by the Planning & Community Services Committee at their June meeting.		
RECOMMENDED ACTION: PUBLIC HEARING .		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
July 17, 2014		

ORDINANCE NO. 14-XXXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, RELATING TO LAND USE AND ZONING, AMENDING THE BLACK DIAMOND MUNICIPAL CODE PROVISIONS RELATING TO DEVELOPMENT AGREEMENTS, REQUIRING CONSISTENCY BETWEEN EXISTING DEVELOPMENT REGULATIONS AND DEVELOPMENT AGREEMENTS, IDENTIFYING THE ELEMENTS OF AN APPLICATION OF A DEVELOPMENT AGREEMENT, DESCRIBING THE PROCEDURE FOR PROCESSING DEVELOPMENT AGREEMENTS, CLARIFYING THE EFFECT, FORMAT, REQUIREMENTS FOR PUBLIC HEARING, RECORDING AND APPEALS; AMENDING BDMC SECTION 18.66.010; REPEALING SECTION 18.66.020; ADDING NEW SECTIONS 18.66.020, 18.66.030, 18.66.040 AND 18.66.050 AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the process in chapter 18.66 BDMC on the subject of development agreements is inconsistent with state law (RCW 36.70B.170(1)), which requires that “a development agreement shall be consistent with applicable development regulations adopted by a local government planning under chapter 36.70A RCW”; and

WHEREAS, state law does not allow the City’s development regulations to be “modified in the development agreement” (as currently provided in BCMC Section 18.66.020); and

WHEREAS, chapter 18.66 BDMC does not clearly state that development agreements are discretionary, the purpose for which such agreements should be used, the procedure for processing development agreements and the manner in which appeals of development agreement may be filed; and

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

WHEREAS, the City Council considered this Ordinance during its regular City Council meeting on June 5, 2014;

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

Section 1. Amendment of Section 18.66.010. Section 18.66.010 of the Black Diamond Municipal Code is hereby amended to read as follows:

18.66.010 Intent and Discretionary Nature.

~~The purpose of this chapter is to authorize the use of development agreements, consistent with RCW 36.70B.170 through RCW 36.70B.210. as authorized by state law, as a means to document conditions and procedures for certain types of development and to thereby provide greater certainty to the city, applicants and the public regarding how property will be developed. Development agreements may be used for any type of proposals but are anticipated to be applied most often to master planned development per chapter 18.98 and to other large, complex, phased, and/or sensitive development proposals where useful.~~

The City may, but under no circumstances is required to, enter into a development agreement with a person having ownership or control of real property within the City. The development agreement may address such project elements as those set forth in RCW 36.70B.170B(3). The development agreement shall be consistent with the applicable development regulations of the City. The consideration provided by the property owner for the City's decision to enter into the development agreement may vary, depending on the benefit the development agreement will provide to the City and/or the public in general.

Section 2. Repeal of Section 18.66.020. Section 18.66.020 of the Black Diamond Municipal Code is hereby repealed.

Section 3. Adoption of new Section 18.66.020. A new section 18.66.020 is hereby added to the Black Diamond Municipal Code:

18.66.020 Form of Agreement, Effect and General Provisions.

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

B. Effect. Development agreements are not project permit applications and are not subject to the permit processing procedures in chapter 18.14 of the BDMC. A development agreement shall constitute a binding contract between the City and the property owner and the subsequent owners of any later-acquired interests in the property identified in the development agreement.

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

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

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

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

Section 4. A new Section 18.66.030 is hereby added to the Black Diamond Municipal Code, which shall read as follows:

18.66.030 Application Requirements. A complete application for a development agreement shall consist of the following:

- A. Name, address, telephone number and e-mail address (if any) of the property owner. If the applicant is not the property owner, the applicant must submit a verified statement from the property owner that the applicant has the property owner's permission to submit the application;
- B. Address, parcel number and legal description of the property proposed to be subject to the development agreement;
- C. Recent title report confirming that the property identified in the application is owned by the applicant/property owner;
- D. Identification of any application (project permit application, comprehensive plan amendment application, development regulation amendment application) that is related to the proposed development agreement;
- E. SEPA Checklist;
- F. A completed application form and the application fee established by the City for this purpose; and
- G. Any other information requested by the Community Development Director relevant to the processing of the development agreement.

Section 5. A new Section 18.66.040 is hereby added to the Black Diamond Municipal Code, which shall read as follows:

18.66.040. Phasing.

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

B. The deadlines in the City's code relating to each type of project permit application must be consulted to establish the baseline vesting period. The City is not required to extend the vesting period. If the City decides to do so through a development agreement, it must be in exchange for the property owner's provision of corresponding benefits to the City in the form of, for example, contributions to public facilities and amenities over and above what would normally be required. In any event, the City shall not allow vesting to extend beyond the established ____ () year period after approval of the project permit application.

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

1. identification of the phasing schedule;
2. identification of the number of phases and all lots included in each phase;
3. identification of the approximate dates for construction of public streets, public utilities and other improvements in each phase;
4. identification of the approximate dates for commencement of development of each lot, lot sales and building occupancy;
5. identification of the benefits that the property owner will provide to the City in exchange for permission to phase the development according to the proposed schedule;
6. establishment of the deadline for the property owner to submit development applications, including building permit applications, for each phase;
7. a description of the manner in which each phase is designed such that all site requirements are satisfied independently of phases yet to be given final approval and constructed;
8. a description of the manner in which the property owner will ensure that adequate public facilities are available when the impact of development occurs. The property owner shall acknowledge in the development

agreement that if the demand for public facilities or services needed to accommodate a subsequent development phase increases following the issuance of a development permit for a prior phase in the approval process, or if public facilities or services included in a concurrency or SEPA determination are not constructed as scheduled in the City's capital facilities plan, final development approval may have to be delayed for future phases pending the achievement of the adopted levels of service.

Section 6. A new Section 18.66.050 is hereby added to the Black Diamond Municipal Code, which shall read as follows:

18.66.050 Processing Procedures.

A. Consolidation. Whenever possible, the development agreement shall be consolidated for processing with an underlying project permit application or other application for a legislative approval. If the development agreement is consolidated with a project permit application, the property owner must agree to waive the deadline in RCW 36.70B.080 and BDMC Section 18.14.020.A for issuance of a final decision on the underlying application, as well as the prohibition on no more than one open record hearing and one closed record hearing on the underlying project permit application in RCW 36.70B.060(3) and BDMC Sections 2.30.100 and 18.08.070.

B. Public Hearing. While the Hearing Examiner may provide a recommendation on a development agreement (even if the Hearing Examiner makes the final decision on the underlying project permit application), the City Council shall make the final decision whether to approve a development agreement by ordinance or resolution after a public hearing. Modifications to a development agreement shall be in writing, signed by the duly authorized representatives of the parties, be consistent with this chapter and follow the same procedures set forth in this chapter.

C. Appeal. A development agreement associated with an underlying project permit application may be appealed in the same manner and within the same deadline as the underlying project permit application. A development agreement associated with a legislative approval, such as a comprehensive plan amendment, may be appealed in the same manner and within the same deadline as the legislative approval.

4. Recording Against the Property. The City shall record the development agreement against the property with the real property records of the King County Department of Records and Elections. During the term of the agreement, it is binding upon the owners of the property and any successors in interest to such property.

Section 7. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 8. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 9. Effective Date. This Ordinance shall be effective five days after publication as provided by law.

PASSED by the Council and approved by the Mayor of the City of Black Diamond, this
____th day of _____, 2014.

CITY OF BLACK DIAMOND

Mayor Dave Gordon

ATTEST/AUTHENTICATED:

Brenda Martinez, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Carol A. Morris, City Attorney

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

RCW 36.70B.170**Development agreements — Authorized.**

(1) A local government may enter into a development agreement with a person having ownership or control of real property within its jurisdiction. A city may enter into a development agreement for real property outside its boundaries as part of a proposed annexation or a service agreement. A development agreement must set forth the development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement. A development agreement shall be consistent with applicable development regulations adopted by a local government planning under chapter 36.70A RCW.

(2) RCW 36.70B.170 through 36.70B.190 and section 501, chapter 347, Laws of 1995 do not affect the validity of a contract rezone, concomitant agreement, annexation agreement, or other agreement in existence on July 23, 1995, or adopted under separate authority, that includes some or all of the development standards provided in subsection (3) of this section.

(3) For the purposes of this section, "development standards" includes, but is not limited to:

(a) Project elements such as permitted uses, residential densities, and nonresidential densities and intensities or building sizes;

(b) The amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;

(c) Mitigation measures, development conditions, and other requirements under chapter 43.21C RCW;

(d) Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features;

(e) Affordable housing;

(f) Parks and open space preservation;

(g) Phasing;

(h) Review procedures and standards for implementing decisions;

(i) A build-out or vesting period for applicable standards; and

(j) Any other appropriate development requirement or procedure.

(4) The execution of a development agreement is a proper exercise of county and city police power and contract authority. A development agreement may obligate a party to fund or provide services, infrastructure, or other facilities. A development agreement shall reserve authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

[1995 c 347 § 502.]

Notes:

Chapter 18.66

DEVELOPMENT AGREEMENTS

Sections:

18.66.010 Intent.

18.66.020 Applicability and procedures.

18.66.010 Intent.

The purpose of this chapter is to authorize the use of development agreements, as authorized by state law, as a means to document conditions and procedures for certain types of development and to thereby provide greater certainty to the city, applicants and the public regarding how property will be developed. Development agreements may be used for any type of proposals but are anticipated to be applied most often to master planned development, per Chapter 18.98, and to other large, complex, phased, and/or sensitive development proposals where useful.

(Ord. No. 909, § 2 (Exh. A), 6-18-2009)

18.66.020 Applicability and procedures.

A. The city may enter into development agreements with property owners as authorized by RCW 36.70B.170 et seq. Development agreements are intended to be used to address and establish development standards, mitigation requirements, vesting provisions and review procedures that will apply to and govern large, complex and/or phased development proposals located within the city during the term of any agreement.

B. Any development agreement shall be consistent with applicable city development regulations except as such regulations may be modified in the development agreement. For purposes of this chapter, "development standards" include but are not limited to:

1. Project elements such as uses, densities and intensities of land uses and buildings;
2. Mitigation measures, conditions and other requirements identified pursuant to SEPA (RCW 43.21 C);

3. Design standards such as maximum heights, setbacks, landscaping and other development features;

4. Road and sidewalk standards;

5. Affordable housing;

6. Water, sewer, storm drainage, water quality, and other infrastructure and utility requirements;

7. Parks and open space preservation, and recreation facilities;

8. Phasing of development and construction;

9. Development review processes, procedures and standards for implementing decisions, including methods of reimbursement to the city for review processes;

10. A build-out or vesting period for applicable development standards;

11. A process for amending the development agreement; and

12. Any other appropriate development requirement or procedure.

C. During the term specified in the development agreement, a development permit or approval issued by the city shall be consistent with the standards in such agreement. The standards contained in the development agreement shall govern during the term of the agreement and may not be subject to an amendment of city development standards or regulations adopted after the effective date of the development agreement. Provided, that the development agreement shall reserve to the city the authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

D. A development agreement shall be recorded with the real property documents of King County. During the term of the agreement, it shall be binding on the parties and their successors, including a city that assumes jurisdiction through incorporation or annexation of the area or property subject to the development agreement. Unless terminated, the agreement shall be enforceable by a party to the agreement.

E. A development agreement shall be reviewed and adopted following a public hearing pursuant to the procedures and requirements set forth in Chapter 18.08.

(Ord. No. 909, § 2 (Exh. A), 6-18-2009)

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: AB14-067 PUBLIC HEARING Ordinance repealing and adopting new SEPA procedures.	Agenda Date: July 17 , 2014	
	AB14-067	
	Mayor Dave Gordon	
	City Administrator	
	City Attorney Carol Morris	X
	City Clerk – Brenda L. Martinez	
	Community Development –	
	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:		
Timeline:		
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: Proposed Ordinance No. 14-1031		
SUMMARY STATEMENT: Adoption of this Ordinance would repeal the City current procedures of implementation of the State Environmental Policy Act (SEPA) and adopting new procedures for review of all “actions” under SEPA, issuance of threshold decisions, preparation of environmental impact statement, public notice, commend and appeals; repealing Chapter 19.04 and adopting a new Chapter 19.04 of the Black Diamond Municipal Code. FISCAL NOTE (Finance Department): N/A		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: Discussion by the Planning & Community Services Committee at their June meeting.		
RECOMMENDED ACTION: MOTION to adopt Ordinance No. 14-1031, relating to the State Environmental Policy Act (SEPA), repealing the City’s current procedures for implementation of SEPA and adopting new procedures for review of all “action” under SEPA, issuance of threshold decision, preparation of environmental impact statements, public notice, comment and appeals; repealing Chapter 19.04 and adopting new Chapter 19.04 of the Black Diamond Municipal Code.		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
July 17, 2014		

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, RELATING TO THE STATE ENVIRONMENTAL POLICY ACT (SEPA), REPEALING THE CITY'S CURRENT PROCEDURES FOR IMPLEMENTATION OF SEPA AND ADOPTING NEW PROCEDURES FOR REVIEW OF ALL "ACTIONS" UNDER SEPA, ISSUANCE OF THRESHOLD DECISIONS, PREPARATION OF ENVIRONMENTAL IMPACT STATEMENTS, PUBLIC NOTICE, COMMENT AND APPEALS; REPEALING CHAPTER 19.04 AND ADOPTING A NEW CHAPTER 19.04 OF THE BLACK DIAMOND MUNICIPAL CODE.

WHEREAS, the City's Environmental Policy Code (chapter 19.04 BDMC) was adopted in 1984 and with the exception of Section 19.04.250 relating to appeals, has not been amended since that time; and

WHEREAS, most of chapter 19.04 BDMC involves the adoption of the State Environmental Policy Act (SEPA) Rules (Washington State Administrative Code chapter 197-11) by reference; and

WHEREAS, because the Washington State Legislature has adopted new SEPA Rules since 1984, these new Rules have not been incorporated by reference into the City's Environmental Policy Code chapter 19.04 BDMC; and

WHEREAS, the City's existing chapter on SEPA needs to be so extensively revised in order to incorporate the new SEPA Rules that the existing chapter should be completely repealed; and

WHEREAS, on June 30, 2014, the City's SEPA Responsible Official determined that the adoption of this Ordinance is categorically exempt under WAC 197-11-800(19) as an ordinance relating to procedures only; and

DRAFT June 30, 2014

WHEREAS, on _____, 2014, the City Council held a first reading of this Ordinance; and

WHEREAS, on _____, 2014, this Ordinance was considered by the City Council in a second reading; Now, Therefore,

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

Section 1. Chapter 19.04 of the Black Diamond Municipal Code is hereby repealed.

Section 2. A new chapter 19.04 is hereby added to the Black Diamond Municipal Code, which shall read as follows:

Chapter 19.04

**ENVIRONMENTAL REVIEW
STATE ENVIRONMENTAL POLICY ACT (SEPA)**

Sections.

- | | |
|------------------|---|
| 19.04.010 | Authority. |
| 19.04.020 | Definitions adopted by reference. |
| 19.04.030 | Additional definitions. |
| 19.04.040 | Process. |
| 19.04.050 | Designation of responsible official. |
| 19.04.060 | Lead agency determination and responsibilities. |
| 19.04.070 | Transfer of lead agency status to state agency. |
| 19.04.080 | Categorical exemptions – Adoption by reference. |
| 19.04.090 | Categorical exemptions – Determination. |
| 19.04.100 | Flexible thresholds for categorical exemptions. |
| 19.04.110 | Integration with permit and land use decisions. |
| 19.04.120 | Integration of SEPA with project permit decisions. |
| 19.04.130 | Threshold determinations. |
| 19.04.140 | Environmental checklist. |
| 19.04.150 | Timing. |
| 19.04.160 | Mitigated DNS. |
| 19.04.170 | Environmental impact statement. |
| 19.04.180 | Preparation of EIS – Additional considerations. |

- 19.04.190** Additional elements to be covered by EIS.
- 19.04.200** Commenting.
- 19.04.210** Public notice.
- 19.04.220** Designation of official to perform consulted agency responsibilities for the City.
- 19.04.230** Using existing environmental documents.
- 19.04.240** SEPA and agency decisions.
- 19.04.250** Substantive authority.
- 19.04.260** Appeals.
- 19.04.260** Notice/statute of limitations.
- 19.04.270** Agency compliance.
- 19.04.280** Critical areas.
- 19.04.290** Fees.
- 19.04.300** Adoption of forms by reference.

19.04.010 Authority. The City adopts this chapter under the State Environmental Policy Act (SEPA), RCW 43.21C.120 and the SEPA Rules, chapter 197-11 WAC. This ordinance contains the City's SEPA procedures and policies. The SEPA Rules, chapter 197-11 WAC must be used in conjunction with this chapter.

19.04.020 Definitions. This part contains the basic requirements that apply to the SEPA process. The City adopts the following sections of chapter 197-11 of the Washington Administrative Code by reference:

WAC

- 197-11-040 Definitions.
- 197-11-220 SEPA/GMA definitions.
- 197-11-700 Definitions.
- 197-11-702 Act.
- 197-11-704 Action.
- 197-11-706 Addendum.
- 197-11-708 Adoption.
- 197-11-710 Affected Tribe.
- 197-11-712 Affecting.
- 197-11-714 Agency.
- 197-11-716 Applicant.
- 197-11-718 Built Environment.
- 197-11-720 Categorical exemption.
- 197-11-721 Consolidated appeal.
- 197-11-724 Consulted agency.
- 197-11-726 Cost-benefit analysis.
- 197-11-728 County/city.
- 197-11-730 Decision-maker.
- 197-11-732 Department.

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197-11-734	Determination of nonsignificance (DNS).
197-11-736	Determination of significance (DS).
197-11-738	EIS.
197-11-740	Environment.
197-11-742	Environmental checklist.
197-11-744	Environmental document.
197-11-746	Environmental review.
197-11-750	Expanded scoping.
197-11-752	Impacts.
197-11-754	Incorporation by reference.
197-11-756	Lands covered by water.
197-11-758	Lead agency.
197-11-760	License.
197-11-762	Local agency.
197-11-764	Major action.
197-11-766	Mitigated DNS.
197-11-768	Mitigation.
197-11-770	Natural environment.
197-11-772	NEPA.
197-11-774	Nonproject.
197-11-775	Open record hearing.
197-11-776	Phased review.
197-11-778	Preparation.
197-11-780	Private project.
197-11-782	Probable.
197-11-784	Proposal.
197-11-786	Reasonable alternative.
197-11-788	Responsible official.
197-11-790	SEPA.
197-11-792	Scope.
197-11-793	Scoping.
197-11-794	Significant.
197-11-796	State agency.
197-11-797	Threshold determination.
197-11-799	Underlying government action.

19.04.030 Additional definitions. In addition to those definitions contained with WAC 197-11-700 through 197-11-799 and 197-11-220, when used in this chapter, the following terms shall have the following meanings, unless the context indicates otherwise:

- A. "Department" means any division, unit or department of the City.
- B. "Ordinance" or "chapter" means the ordinance, resolution or other procedure used by the City to adopt regulatory requirements.

C. “Early notice” means the City’s response to an applicant stating whether it considers issuance of a determination of significance likely for the applicant’s proposal (mitigated determination of nonsignificance (MDNS) procedures).

19.04.040. Process. The City adopts the following sections of Chapter 197-11 WAC by reference:

WAC

- 197-11-050 Lead Agency.
- 197-11-055 Timing of the SEPA Process.
- 197-11-060 Content of Environmental Review.
- 197-11-070 Limitations on actions during SEPA Process.
- 197-11-080 Incomplete or unavailable information.
- 197-11-090 Supporting documents.
- 197-11-100 Information required of applicants
- 197-11-158 GMA project review – reliance on existing plans, laws and regulations.
- 197-11-164 Planned actions – definitions and criteria.
- 197-11-168 Ordinances or resolutions designating planned actions.
- 197-11-172 Planned actions – project review.
- 197-11-210 SEPA/GMA integration.
- 197-11-228 Overall SEPA/GMA integration procedures.
- 197-11-230 Timing of an integrated GMA/SEPA process.
- 197-11-232 SEPA/GMA integration procedures for preliminary planning, environmental analysis, and expanded scoping.
- 197-11-235 Documents.
- 197-11-238 Monitoring.
- 197-11-250 SEPA/Model Toxics Control Act Integration.
- 197-11-253 SEPA Lead Agency for MTCA actions.
- 197-11-256 Preliminary evaluation.
- 197-11-259 Determination of nonsignificance and EIS for MTCA remedial actions.
- 197-11-265 Early scoping for MTCA remedial actions.
- 197-11-268 MTCA interim actions.

19.04.050 Designation of responsible official.

A. For those proposals for which the City is the lead agency, the responsible official shall be the Community Development Director.

B. For all proposals for which the City is the lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS) and perform any other functions assigned to the “lead agency” or responsible official”

by those sections of the SEPA rules that were adopted by reference in this chapter.

19.04.060 Lead agency determination and responsibilities.

A. The SEPA Responsible Official shall determine the lead agency for any application for or initiation of a proposal that involves a nonexempt action, as provided in WAC 197-11-050, unless the lead agency has been previously determined or if another agency is in the process of determining the lead agency.

B. When the City is the lead agency for a proposal, the SEPA Responsible Official shall supervise compliance with the necessary threshold determination requirements, and if an EIS is necessary, shall supervise preparation of the EIS.

C. When the City is not the lead agency for a proposal, all departments of the City shall use and consider, as appropriate, either the DNS or the final DIS of the lead agency in making decisions on the proposal. No City department shall prepare or require preparation of a DNS or EIS in addition to that prepared by the lead agency, unless required under WAC 197-11-600. In some cases, the City may conduct supplemental environmental review under WAC 197-11-600.

D. If the City or any of its departments receives a lead agency determination made by any other agency that appears inconsistent with the criteria of WAC 197-11-253 or 197-11-922 through 197-11-940, it may object to the determination. Any objection must be made to the agency originally making the determination and resolved within fifteen days of receipt of the determination, or the City must petition the department of ecology for lead agency determination under WAC 197-11-946 within the fifteen day time period. Any such petition on behalf of the City may be initiated by the Community Development Director.

E. Departments of the City are authorized to make agreements as to lead agency status or shared lead agency duties for a proposal under WAC 197-11-942 and 197-11-944; PROVIDED, that the responsible official and any department that will incur responsibilities as the result of such agreement approve the agreement.

F. Any department making a lead agency determination for a private project shall require sufficient information from the applicant to identify which other agencies have jurisdiction over the proposal.

19.04.070. Transfer of lead agency status to a state agency. For any proposal for a private project where the City would be the lead agency and for which one or more state agencies have jurisdiction, the City's responsible official may elect to transfer the lead agency duties to a state agency. The state agency

with jurisdiction appearing first on the priority listing in WAC 197-11-936 shall be the lead agency and the City shall be an agency with jurisdiction. To transfer lead agency duties, the City's responsible official must transmit a notice of the transfer together with any relevant information available on the proposal to the appropriate state agency with jurisdiction. The responsible official of the City shall also give notice of the transfer to the private applicant and any other agencies with jurisdiction over the proposal.

19.04.080 Categorical exemptions – Adoption by reference. The City adopts the following rules for categorical exemptions from chapter 197-11 WAC:

WAC

- 197-11-300 Purpose of this part.
- 197-11-305 Categorical exemptions.
- 197-11-800 Categorical exemptions.
- 197-11-880 Emergencies.
- 197-11-890 Petitioning DOE to change exemptions.

19.04.080 Categorical exemptions – Determination. A. Each department within the City that receives an application for a license or, in the case of governmental proposals, the department initiating the proposal, shall determine whether the license, permit and/or proposal is exempt. The department's determination that a proposal is exempt shall be final and is not subject to administrative review. If a proposal is exempt, none of the procedural requirements of this chapter apply to the proposal. The City shall not require completion of an environmental checklist for an exempt proposal.

B. In determining whether or not a proposal is exempt, the Department shall make certain that the proposal is properly defined and shall identify the governmental licenses required (WAC 197-11-070). If a proposal includes exempt and non-exempt actions, the Department shall determine the lead agency, even if the license application that triggers the Department's consideration is exempt.

C. If a proposal includes both exempt and nonexempt actions, the City may authorize exempt actions prior to compliance with the procedural requirements of this chapter, except that:

1. The City shall not give authorization for:
 - a. any nonexempt action;
 - b. any action that would have an adverse environmental impact; or
 - c. any action that would limit the choice of alternatives.

2. The Department may withhold approval of an exempt action that would lead to modification of the physical environment, when such modification would serve no purpose if the nonexempt action(s) were not approved; and

3. A department may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if the nonexempt actions were not approved.

The City will normally identify whether an action is categorically exempt within 2845 days of receiving a completed application. The Community Development Director shall certify when an application is complete based upon review of the environmental checklist, or for project permit applications, based on the requirements for a complete application set forth in the City's code for each permit type. If additional information is required to supplement the checklist, the application shall not be certified complete until the required information is received by the Director.

19.04.100 — Flexible thresholds for categorical exemptions. [this section is optional. The lowest level in the ranges below apply unless the City raises the level based on local conditions, such as previous DNSs on the activities or the City's development codes. Pursuant to WAC 197-11-800(1)(c), the City may raise the level for an exemption to any point up to the maximums specified in WAC 197-11-800(1)(d). Once levels are established in this ordinance, the City must apply a level to all projects within the geographic area. ~~Make a choice to include this section.]~~

~~_____ A. _____ The City establishes the following exempt level for minor new construction under WAC 197-11-800(1)(b) based on local conditions:~~

~~_____ 1. _____ For residential dwelling units in 197-11-800(1)(b)(i) (NOTE: range 4-30 units) Up to _____ dwelling units.~~

~~_____ 2. _____ For multi-family dwelling units in 197-11-800(1)(b)(ii) (NOTE: range 4-60 units) Up to _____ multi-family dwelling units.~~

~~_____ 3. _____ For agricultural structures in WAC 197-11-800(1)(b)(iii) (NOTE: Range 10,000 to 40,000 square feet): Up to _____ square feet.~~

~~_____ 4. _____ For office, school, commercial, recreational, service or storage buildings in WAC 197-11-800(1)(b)(iv) NOTE: Range is 4,000 to 30,000 square feet and 20-90 parking spaces) Up to _____ square feet and up to _____ parking spaces.~~

~~_____ 5. _____ For landfills and excavations in WAC 197-11-800(1)(b)(v) (Note: Range is 100-1,000 cubic yards) Up to _____ cubic yards.~~

~~_____ B. _____ Whenever the City establishes new exempt levels under this section, it shall send them to the Department of Ecology, Headquarters Office, Olympia, WA 98504 under WAC 197-11-800(1)(c).~~

19.04.110 Integration with permit and land use decision. Under chapter 36.70B RCW, the procedure for review and processing of project permit applications shall be combined with the environmental review process, both procedural and substantive. The process under the State Environmental Policy Act (SEPA) and this chapter shall integrate the following procedures, insofar as possible, with any applicable process for decision-making on permit and land use applications:

A. Staff review of the application under City codes and regulations and the environmental review and determination thereon;

B. The staff report on the application, and the report or documentation concerning environmental review;

C. Hearings and other public processes, including required public notices, required by City code or regulation, and hearings and other public processes, including public notices and appeals, required or conducted under SEPA.

D. Such other review processes as determined by the Community Development Director.

19.04.120. Integration of SEPA with project permit decision-making. Under chapter 36.70B RCW, the procedure for review of project permit applications (as defined in RCW 36.70B.020) shall be combined with the environmental review process, both procedural and substantive.

19.04.130 Threshold determinations. This part contains the rules for deciding whether a proposal has a “probable, significant, adverse environmental impact” requiring an environmental impact statement to be prepared. This part also contains rules for evaluating the impacts of proposals not requiring an EIS. The City adopts the following sections by reference, as supplemented in this part:

WAC

- 197-11-310 Threshold determination required.
- 197-11-315 Environmental Checklist.
- 197-11-330 Threshold Determination Process.
- 197-11-335 Additional Information.
- 197-11-340 Determination of Significance (DS)
- 197-11-350 Mitigated DNS.

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- 197-11-355 Optional DNS process.
- 197-11-360 Determination of significance (DS)(initiation of scoping)
- 197-11-390 Effect of threshold determination

19.04.140 Environmental Checklist.

A. Except as provided in subsection (4) of this section, a completed environmental checklist (or a copy), in the form provided in WAC 197-11-960, shall be filed at the same time as an application for a permit, license, certificate or other approval not specifically exempted in this chapter, except that a checklist is not needed if the City and applicant agree that an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. The City shall use the environmental checklist to determine the lead agency, and if the City is the lead agency, for determining the responsible official and for making the threshold determinations.

B. For private proposals, the City will require the applicant to complete the environmental checklist, providing assistance as necessary. For City proposals, the Department initiating the proposal shall complete the environmental checklist for that proposal.

C. The City may require that it, and not the private applicant, will complete all or part of the environmental checklist for a private proposal, if either of the following occurs:

1. The City has technical information on a question or questions that are unavailable to the private applicant; or
2. The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.

D. For applications submitted as planned actions under WAC 197-11-164, the City shall use its existing environmental checklist form or may modify the environmental checklist form as provided in WAC 197-11-315. The modified environmental checklist form may be prepared and adopted along with or as part of a planned action ordinance; or developed after the ordinance is adopted. In either case, a proposed modified environmental checklist form must be sent to the Department of Ecology to allow at least a thirty-day review prior to use.

19.04.150 Timing. For those project permit applications that are not subject to chapter 36.70B RCW, the following will apply:

A. The City will attempt to issue a threshold determination on a completed application within ninety (90) days after the application and supporting documentation are complete.

B. A complete application for a threshold determination consists of the following information:

1. A description of the proposed action;
2. Site information, including site plans, vicinity maps and other information required for a land use certification or other application;
3. The environmental checklist;
4. Additional information/environmental checklist (WAC 197-11-335). The environmental checklist covers sixteen (16) subjects. If, after review of the environmental checklist, it is determined that there is insufficient information to make a threshold determination, additional information will be required using any one or more of the following:

- a. The applicant will provide more information on subjects in the checklist;
- b. The City makes its own further study;
- c. The City will consult with other agencies, requesting information on the proposal's probable or potential impacts which lie within the other agency's jurisdiction or expertise.

C. It is the policy of the City that adequate information must be provided before a threshold decision can be made. The City will not commence processing environmental checklists which are not complete.

19.04.160 Mitigated DNS.

A. As provided in this section and in WAC 197-11-350, the responsible official may issue a DNS based on conditions attached to the proposal by the responsible official or on changes to, or clarifications of, the proposal made by the applicant.

B. An applicant may request in writing early notice of whether a DS is likely under WAC 197-11-350. The request must:

1. Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the department is lead agency; and
2. Precede the City's actual threshold determination for the proposal.

C. The responsible official should respond to the request for early notice within 15 [fill in] working days. The response shall:

1. Be written;

2. State whether the City currently considers issuance of a DS likely and if so, indicate the general or specific area(s) of concern that is/are leading the City to consider a DS; and

3. State that the applicant may change or clarify the proposal to mitigate the indicated impacts, revising the environmental checklist and/or permit application as necessary to reflect the changes or clarifications.

D. As much as possible, the City should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.

F. When an applicant submits a changed or clarified proposal, along with a revised or amended environmental checklist, the City shall base its threshold determination on the changed or clarified proposal and should make the determination within fifteen days of receiving the changed or clarified proposal;

1. If the City indicated specific mitigation measures in its response to the request for early notice, and the applicant changed or clarified the proposal to include those specific mitigation measures, the City shall issue and circulate a DNS under WAC 197-11-340(2).

2. If the City indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the City shall make the threshold determination, issuing a DNS or DS as appropriate.

3. The applicant's proposed mitigation measures (clarifications, changes or conditions) must be in writing and must be specific. For example, proposals to "control noise" or "prevent storm water runoff" are inadequate, whereas proposals to "muffle machinery to X decibel" or "construct 200-foot storm water retention pond at Y location" are adequate.

4. Mitigation measures which justify issuance of a mitigated DNS may be incorporated in the DNS by reference to agency staff reports, studies or other documents.

G. A mitigated DNS is issued under WAC 197-11-340(2), requiring a fourteen-day comment period and public notice. ~~Option 2 was eliminated~~

H. Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the permit decision and may be enforced in the same manner as any term or condition of the permit, or enforced in any manner specifically prescribed by the City.

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I. If the City's tentative decision on a permit or approval does not include mitigation measures that were incorporated in a mitigated DNS for the proposal, the City should evaluate the threshold determination to assure consistency with WAC 197-11-340(3)(a) (withdrawal of DNS).

J. The City's written response under subsection (B) of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarifications or changes to a proposal, as opposed to a written request for early notice, shall not bind the City to consider the clarifications or changes in its threshold determination.

19.04.170 Environmental Impact Statement. This part contains the rules for preparing environmental impact statements. The City adopts the following sections by reference, as supplemented by this part:

WAC

197-11-400	Purpose of EIS
197-11-402	General Requirements
197-11-405	EIS types
197-11-406	EIS timing
197-11-408	Scoping
197-11-410	Expanded Scoping (Optional)
197-11-420	EIS preparation
197-11-425	Style and Size
197-11-430	Format
197-11-435	Cover letter or memo
197-11-440	EIS contents
197-11-442	Contents of EIS on nonproject proposals
197-11-443	EIS contents when prior nonproject EIS
197-11-444	Relationship of EIS to other considerations
197-11-450	Cost-benefit analysis
197-11-455	Issuance of DEIS
197-11-460	Issuance of FEIS

19.04.180 Preparation of EIS – Additional Considerations.

A. Preparation of draft and final EISs (DEIS and FEIS) and draft and final supplemental EISs (SEIS) is the responsibility of the City under the direction of the responsible official. Before the City issues an EIS, the responsible official shall be satisfied that it complies with this ordinance and chapter 197-11 WAC. When there is a project permit application, preparation of the EIS is the responsibility of the applicant, under direction of the responsible official. However, when there is no project permit application, the Community Development Director shall have the discretion to determine the responsibility for

preparation of the EIS, under the direction of the responsible official based on the circumstances.¹

B. The DEIS and FEIS or draft and final SEIS shall be prepared by the City staff, the applicant, or by a consultant selected by the City. If the responsible official requires an EIS for a proposal and determines that someone other than the City will prepare the EIS, the responsible official shall notify the applicant immediately after completion of the threshold determination. The responsible official shall also notify the applicant of the City's procedure for EIS preparation, including approval of the DEIS and FEIS prior to distribution.

C. The City may require an applicant to provide information the City does not possess, including specific investigations. However, the applicant is not required to supply information that is not required under this chapter or that is being requested from another agency. However, this does not apply to information the City may request under another ordinance or statute.

D. Subject to delays caused by the applicant's failure to provide information requested by the City and other delays beyond the City's control, an EIS will be completed within one (1) year of the date of the declaration of significance, unless an appeal is filed or the City and applicant agree in writing to a different estimated time period for completion of the EIS.

19.04.190 Additional elements to be covered by EIS. The following additional elements are part of the environment for the purpose of EIS content, but do not add to the criteria for threshold determinations or perform any other function or purpose under this chapter: economy; social policy analysis and cost-benefit analysis.

19.04.200 Adoption by reference. This part contains rules for consulting, commenting and responding on all environmental documents under SEPA, including rules for public notice and hearings. The City adopts the following sections by reference, as supplemented by this part:

WAC

197-11-500	Purpose of this part
197-11-502	Inviting comment
197-11-504	Availability and cost of environmental documents
197-11-508	SEPA register
197-11-510	Public notice
197-11-535	Public hearings and meetings

¹ For example, if there are five comprehensive plan amendments submitted during the annual amendment process, four of which are submitted by private property owners and one from the City, the Community Development Director may allocate the financial responsibility for the EIS preparation between the property owners and the City.

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197-11-545	Effect of no comment
197-11-550	Specificity of comments
197-11-560	FEIS response to comments
197-11-570	Consulted agency costs to assist lead agency

19.04.210 Public notice.

A. Whenever the City issues a DNS under WAC 197-11-340(2) or a DS under WAC 197-11-360(3), the City shall give public notice as follows:

1. If public notice is required for a nonexempt license, the notice shall state whether a DS or DNS has been issued and when comments are due;

2. If no public notice is required for the permit or approval, the City shall give notice of the DNS or DS by: **[Select at least one of the following]**

- a. Posting the property, for a site-specific proposal;
- b. Publishing notice in a newspaper of general circulation in the county, city or general area where the proposal is located;
- c. Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered;
- d. Notifying the news media;
- e. Placing notices in appropriate regional, neighborhood, ethnic or trade journals; and/or
- f. Publishing notice in agency newsletters and/or sending notice to agency mailing lists (either general lists or lists for specific proposals for subject areas); or
- g. [Black Diamond's Website under Public Notices](#) _____ [any other method].

B. When the City issues a DS under WAC 197-11-360(3), the City shall state the scoping procedure for the proposal in the DS as required in WAC 197-11-408 and in the public notice.

C. Whenever the City issues a DEIS under WAC 197-11-455(5) or a SEIS under WAC 197-11-620, notice of the availability of those documents shall be given by:

1. Indicating the availability of the DEIS in any public notice required for a nonexempt license; and **[use at least one of the following]:**

- a. Posting the property, for site-specific proposals;

- b. Publishing notice in a newspaper of general circulation in the County, City or general area where the proposal is located;
- c. Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered;
- d. Notifying the news media;
- e. Placing notices in appropriate regional, neighborhood, ethnic or trade journals; and/or
- f. Publishing notice in agency newsletters and/or sending notice to agency mailing lists (general lists or specific lists for proposal or subject areas); and/or
- g. [Black Diamond's Website under Public Notices](#) [any other method].

D. Whenever possible, the City shall integrate the public notice required under this Section with existing notice procedures for the City's nonexempt permit(s) or approval(s) required for the proposal.

E. The City may require an applicant to complete the public notice requirements for the applicant's proposal at his/her expense.

19.04.220 Designation of official to perform consulted agency responsibilities for the City.

A. The [Community Development Director](#) shall be responsible for preparation of written comments for the City in response to a consultation requires prior to a threshold determination, participation in scoping, and reviewing a DEIS.

B. The [Community Development Director](#) shall be responsible for the City's compliance with WAC 197-11-440 whenever the City is a consulted agency and is authorized to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate departments of the City.

19.04.230 Using Existing Environmental Documents. This part contains rules for using and supplementing existing environmental documents prepared under SEPA or National Environmental Policy Act (NEPA) for the City's own environmental compliance. The City adopts the following sections by reference:

WAC

- 197-11-600 When to use existing environmental documents
- 197-11-610 Use of NEPA documents
- 197-11-620 Supplemental environmental impact statement – procedures

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197-11-625	Addenda – procedures
197-11-630	Adoption – procedures
197-11-635	Incorporation by reference – procedures
197-11-640	Combining documents

19.04.240 SEPA and Agency Decisions. This part contains rules (and policies) for SEPA’s substantive authority, such as decisions to mitigate or reject proposals as a result of SEPA. This part also contains procedures for appealing SEPA determinations to agencies or the courts. The City adopts the following sections by reference:

WAC

197-11-650	Purpose of this part
197-11-655	Implementation
197-11-660	Substantive authority and mitigation
197-11-680	Appeals

19.04.250 Substantive authority.

A. The policies and goals set forth in this ordinance are supplementary to those in the existing authorization of the City.

B. The City may attach conditions to a permit or approval for a proposal, so long as:

1. Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this chapter; and
2. Such conditions are in writing; and
3. The mitigation measures included in such conditions are reasonable and capable of being accomplished; and
4. The City has considered whether other local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and
5. Such conditions are based on one or more policies in subsection (D) of this section and cited in the license or other decision document.

C. The City may deny a permit or approval for a proposal on the basis of SEPA so long as:

1. A finding is made that approving the proposal would result in probable significant adverse environmental impacts that are identified in a FEIS or final SEIS prepared pursuant to this chapter; and

2. A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the identified impact; and

3. The denial is based on one or more policies identified in writing the decision document.

D. The City designates and adopts by reference the following policies as the basis for the City's exercise of authority pursuant to this section:

1. The City shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

a) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

b) assure for all people of Washington safe, healthful, productive and aesthetically and culturally pleasing surroundings;

c) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

d) preserve important historic, cultural and natural aspects of our national heritage;

e) maintain, wherever possible, an environment which supports diversity and variety of individual choice;

f) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

g) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources;

2. The City recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

3. The City adopts by reference the policies in the following City codes, ordinances, resolutions and plans, as they now exist or may hereafter be amended, as a possible basis for the exercise of substantive SEPA authority in the conditioning or denying of proposals:

- Act.
 - a. Chapter 43.21C RCW – State Environmental Policy
- Regulations.
 - b. Chapter 5.08 of the BDMC Business Licenses and
 - c. Chapter 6.04 of the BDMC – Animals.
 - d. Title 8 and 9 of the BDMC – Health and Safety.
 - e. Title 10 of the BDMC -- Vehicles and Traffic.
 - f. Title 12 of the BDMC -- Streets and Sidewalks.
 - g. Title 13 of the BDMC -- Water and Sewers.
 - h. Title 15 of the BDMC – Buildings and Construction.
 - i. Title 17 of the BDMC – Subdivisions.
 - j. Title 18 of the BDMC – Zoning.
 - k. Chapter 18.08 of the BDMC – Administration of
- Development Regulations.
 - l. The City of Black Diamond's Comprehensive Plan.
 - m. The City of Black Diamond's Shoreline Master
- Program.
 - n. The City's Six Year Road Program.
 - o. The City's Comprehensive Water Plan.
 - p. The City's Comprehensive Sewer Plan.
 - q. Chapter 19.12 of the BDMC – Critical Areas.
 - r. City's Public Works Standards.
 - s. City's Storm Water Management Ordinance.
 - t. Comprehensive Parks Plan.
 - u. School District Capital Facilities Plan;

4. The City establishes the following additional policies:

- A. **Schools.** In order to ensure that adequate school facilities are available to serve new growth and development, as well as to ensure that such new growth and development provides mitigation for direct impacts on school facilities identified by the school district as a consequence of proposed development, the City may impose school mitigation fees, all as provided in RCW 82.02.020.
- B. **Police.** In order to ensure that the City's acceptable level of service for police response is not diminished as a result of new growth and development and to ensure that new growth and development provides mitigation for the

direct impacts on the City's Police Department that are identified by the City as a consequence of proposed development, the City may impose Police and Emergency Response mitigation fees, all as provided in RCW 82.02.020.

- C. **Other City Services.** In order to that the City's acceptable level of service to citizens for all other government services and utilities is not diminished as a result of new growth and development, as well as to ensure that such new growth and development provides mitigation for direct impacts on school facilities identified by the school district as a consequence of proposed development, the City may impose mitigation fees, all as provided in RCW 82.02.020 for parks, ~~and general governmental buildings.~~

19.04.260 Appeals.

The City establishes the following administrative appeal procedures under RCW 43.21C.075 and WAC 197-110-680:

A. Appealable Decisions.

1. Only the following decisions may be administratively appealed under this chapter: (a) Final threshold determination; (2) mitigation or failure to mitigate in the SEPA decision; (3) Final EIS; and (4) project denials.

2. If the City does not provide for a hearing or appeal on the underlying action/permit, then the SEPA administrative appeal on the decisions listed in Subsection 19.04.260(A)(1) above shall be the only hearing and appeal allowed on the underlying action/permit.

B. Notice of Decision.

1. In the Notice of Decision issued by the City pursuant to BCMC 18.08.150 and for every decision for which an appeal is available in this Section, the SEPA Responsible Official shall give official notice of the date and place for commencing an appeal. The notice shall include:

a) Notice that the SEPA issues must be appealed within the time limit set by statute or ordinance for appealing the underlying governmental action;

b) The time limit for commencing the appeal of the underlying governmental action and SEPA issues, and the statute or ordinance establishing the time limit;

c) Where the appeal may be filed.

2. Written notice shall be provided to the applicant, all parties to any administrative appeal and all persons who have requested notice of decisions concerning the project. Such notice may be appended to the permit, the decision documents, the SEPA compliance documents or may be printed separately.

C. Timing of Appeal. The appeal shall take place prior to the City's final decision on a proposed action. However, the SEPA open record appeal hearing may be consolidated with any other hearing on the underlying permit or action.

D. Number of Appeals: Only one administrative appeal to the City is allowed of the decisions listed in Subsection 19.04.260(A) above.

E. Consolidated Appeals. If the underlying action/permit requires a hearing, any SEPA appeal shall be consolidated with the hearing or appeal of the underlying action/permit into one simultaneous hearing, with the exception of the following:

1. An appeal of a determination of significance (DS);
2. An appeal of a procedural determination made by the City when the City is a project proponent, or is funding a project, and chooses to conduct its review under SEPA, including any appeals of its procedural determinations, prior to submitting an application for a project permit. Subsequent appeals of substantive determinations by an agency with jurisdiction over the proposed project shall be allowed under the SEPA appeal procedures of the agency with jurisdiction;
3. An appeal of a procedural determination made by the City on a nonproject action; and
4. An appeal to the City Council under RCW 43.21C.060.

F. Timing of Appeal.

1. *SEPA Decision issues at the same time as underlying action.* An appeal of a SEPA decision that issued at the same time as the decision on a project action shall be filed within fourteen days (14) days after issuance of a notice of decision under BDMC 18.08.150 (or RCW 36.70B.130), or after notice that a decision has been made and is appealable.

2. *SEPA Decision allows Public Comment.* For a DNS or MDNS for which public comment is required (under this chapter) the appeal period shall be extended for an additional seven days.

3. *SEPA Threshold Decision issues prior to decision on underlying action.* An appeal of a threshold decision issued prior to a decision on a project action shall be filed within fourteen (14) days after notice that the decision has been made and is appealable.

G. Consideration of SEPA Responsible Official's Decision. Procedural determinations made by the SEPA Responsible Official shall be entitled to substantial weight by the hearing examiner or city council in an appeal.

H. Administrative Record. An administrative record of the appeal must be provided, and the record shall consist of the following:

- a. Findings and conclusions;
- b. Testimony under oath; and
- c. A taped or written transcript. [The City may require that the appellant provide an electronic transcript.]

I. Exhaustion of Administrative Remedies. The City's administrative appeal procedure must be used before anyone may initiate judicial review of any SEPA issue for which the City allows an appeal in this Section.

J. Content of Appeal. Every appeal must be in writing, and must include the following:

1. The applicable appeal fee, as established by Resolution of the City Council;
2. Appellant's name, address and phone number;
3. A statement describing the appellant's standing, or why the appellant believes that he or she is aggrieved by the decision appealed from;
4. Identification of the application and decision which is the subject of the appeal;
5. Appellant's statement of grounds for appeal and the facts upon which the appeal is based with specific references to the facts in the record;
6. The specific relief sought;
7. A statement that the appellant has read the appeal and believes the content to be true, followed by the appellant's signature.

K. Timeliness of Appeals. On receipt of a written notice of appeal, the SEPA Responsible Official shall forward the appeal to the hearing examiner or city council (whichever is the hearing officer/body on the appeal), who shall determine whether the appeal is timely prior to the scheduling of any appeal hearing or consolidated open record hearing on an underlying project permit. A written decision will issue if the appeal is untimely and the appeal will not proceed.

L. Hearing Examiner Appeals.

1. *Jurisdiction.* All administrative appeals relating to project permit applications or any type of quasi-judicial or ministerial development applications that are not appealable to the City Council (pursuant to subsection M below) shall be heard by the Hearing Examiner.

2. *Hearing.* The Hearing Examiner shall hold an open record public hearing on the appeal, as provided in BDMC 2.30.100.

2. *Date for Issuance of Decision.* The hearing examiner shall issue a decision on the appeal within the time period set forth in 2.30.110, unless a longer period is agreed to in writing by the applicant and hearing examiner.

3. *Appeals of Hearing Examiner's Decision.* The hearing examiner's decision on the timeliness of an appeal within his/her jurisdiction, and any other appeals allowed under this subsection within his/her jurisdiction shall be the final decision of the City. The hearing examiner's decision shall state that any appeal of the final decision shall be filed in Pierce County Superior Court (pursuant to chapter 36.70C RCW), or the Shorelines Hearings Board, if applicable.

M. City Council Appeals.

1. *Jurisdiction.* The City Council shall hear all administrative appeals relating to legislative actions and applications. In addition, the City Council shall hear appeals relating to any other applications that are appealable to the City Council (pursuant to 16.30.130).

2. *Hearing.* For all legislative actions and applications, the City Council shall hold a public hearing. For any SEPA appeals relating to applications for which the City Council has jurisdiction (legislative actions and applications), the City Council shall hold a public hearing.

3. *Record on Appeal.* The evidence and testimony received by the Council in a SEPA appeal shall be presented in an open record hearing.

4. *Appeals of City Council's Decision.* The City Council's decision on the timeliness of an appeal within its jurisdiction and any other appeals allowed under this subsection within its jurisdiction shall be the final decision of the City. The City Council's decision shall state that any appeal of the final decision may be filed in King County Superior Court within 21 days (if applicable) or within 60 days to the Growth Management Hearings Board, pursuant to RCW 36.70A.290(2).

N. Judicial Appeals.

1. When SEPA applies to a decision, any judicial appeal of that decision potentially involves both those issues pertaining to SEPA and those which do not. This Section and RCW 43.21C.075 establish the

time limits for raising SEPA issues, but existing statutes of limitation control the appeal of non-SEPA issues.

2. Appeals of the City's final decision shall be filed in superior court (or the Growth Management Hearings Board), but appellants must follow RCW 43.21C.075(6)(c), which provides that "judicial review under chapter 43.21C RCW shall without exception be of the governmental action together with its accompanying environmental determinations," which contemplates a single lawsuit.

19.04.260 Notice/statute of limitations.

A. The City, applicant for, or proponent of an action may publish a notice of action pursuant to RCW 43.21C.080 for any action.

B. The form of the notice shall be substantially in the form provided by WAC 197-11-990. The notice shall be published by the City Clerk or County Auditor, applicant or proponent, pursuant to RCW 43.21C.080.

19.04.270 Agency Compliance. This part contains rules for agency compliance with SEPA, including rules for charging fees under the SEPA process, designating categorical exemptions that do not apply within critical areas, listing agencies with environmental expertise, selecting the lead agency and applying these rules to current agency activities. The City adopts the following sections by reference:

WAC

197-11-900	Purpose of this part.
197-11-902	Agency SEPA policies.
197-11-916	Application to ongoing actions.
197-11-920	Agencies with environmental expertise.
197-11-922	Lead agency rules.
197-11-924	Determining the lead agency.
197-11-926	Lead agency for governmental proposals.
197-11-928	Lead agency for public and private proposals.
197-11-930	Lead agency for private projects with one agency with jurisdiction.
197-11-932	Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city.
197-11-934	Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies.
197-11-936	Lead agency for private projects requiring licenses from more than one state agency.
197-11-938	Lead agencies for specific proposals.
197-11-940	Transfer of lead agency status to a state agency.

DRAFT June 30, 2014

- 197-11-942 Agreements on lead agency status.
- 197-11-944 Agreements on division of lead agency duties.
- 197-11-946 DOE resolution of lead agency disputes.
- 197-11-948 Assumption of lead agency status.

19.04.280. Critical Areas. [optional]

A. ~~The City has selected certain categorical exemptions that will not apply in one or more critical areas identified in the critical areas ordinances required under RCW 36.70A.060. For each critical area listed below, the exemptions within WAC 197-11-800 that are in applicable for that area are:~~

~~_____ 1. _____ [list each critical area and exemptions that do not apply within that critical area; exemptions that do not apply can be chosen from the list in WAC 197-11-908]~~

~~_____ 2. _____.~~

~~B. The scope of environmental review of actions within these areas shall be limited to:~~

~~_____ 1. Documenting whether the proposal is consistent with the requirements of the critical areas ordinance; and~~

~~_____ 2. Evaluating potentially significant impacts on the critical area resources not adequately addressed by GMA planning documents and development regulations, if any, including any additional mitigation measures needed to protect the critical areas in order to achieve consistency with SEPA and with other applicable environmental review laws.~~

~~C. All categorical exemptions not listed in subsection (1) of this section apply whether or not the proposal will be located in a critical area.~~

19.04.290. Fees. ~~[this entire section is optional. Recommend that the actual fee amounts be included in a resolution. You may use any or none of the subsections 1, 2 or 4 of this section but you must use 3 if the other subsections are used.]~~

A. The City shall require the fees from the applicant for the following activities, in accordance with the provisions of this chapter:

1. Threshold determination: The City will review an environmental checklist when it is lead agency, and the City shall collect a fee from the proponent of the proposal prior to undertaking the threshold

determination. The time periods provided in this Chapter shall not begin to run until payment of the fee.

2. Environmental impact statement.

(a) When the City is the lead agency for a proposal requiring an EIS and the responsible official determines that the EIS shall be prepared by employees of the city, the city may charge and collect a reasonable fee from any applicant to cover the costs incurred by the city in preparing the EIS. The responsible official shall advise the applicant of the projected costs for the EIS prior to actual preparation; the applicant shall post bond or otherwise ensure payment of such costs.

(b) The responsible official may determine that the city will contract directly with a consultant for preparation of an EIS or a portion of the EIS, for activities initiated by some person or entity other than the City and may bill such costs and expenses directly to the applicant. The City may require the applicant to post bond or otherwise ensure payment of such costs. Such consultants shall be selected after input from the applicant, after a call for proposals. The City shall have the final decision on the selection of the consultant.

(c) If a proposal is modified so that an EIS is no longer required, the responsible official shall refund any fees collected under (a) or (b) of this subsection which remain after incurred costs are paid.

3. The City may recover its reasonable expenses of preparation of a nonproject environmental impact statement prepared under RCW 43.21C.229 and 43.21C.440 using the procedures set forth in RCW 43.21C.428.

4. The City may collect a reasonable fee from an applicant to cover the cost of meeting the public notice requirements of this chapter relating to the applicant's proposal.

5. The City shall not collect a fee for performing its duties as a consulted agency.

6. The City may charge any person for copies of any document prepared under this chapter, and for mailing the document, in a manner provided by the City's resolution on public records disclosure.

19.04.300 Adoption by reference. The City adopts the following forms and sections by reference:

WAC

DRAFT June 30, 2014

197-11-960	Environmental checklist
197-11-965	Adoption notice
197-11-970	Determination of nonsignificance (DNS)
197-11-980	Determination of significance and scoping notice (DS)
197-11-985	Notice of assumption of lead agency status
197-11-990	Notice of action

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

Section 4. Effective Date. This Ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the Black Diamond City Council this ____th day of _____, 2014.

CITY OF BLACK DIAMOND

DAVE GORDON, MAYOR

ATTEST/AUTHENTICATED:

By: _____
BRENDA MARTINEZ, CITY CLERK

APPROVED AS TO FORM:

DRAFT June 30, 2014

By: _____
CAROL A. MORRIS, CITY ATTORNEY

FIRST READING:
DATE PASSED:
DATE OF PUBLICATION:
EFFECTIVE DATE:

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
SUBJECT: AB14-068 Resolution authorizing the Mayor to purchase active shooter equipment for the Black Diamond Police Department. Cost Impact \$8038.24 Fund Source: General Fund Timeline:	Agenda Date: July 17th, 2014		AB014-068
	Department/Committee/Individual	Created	
	Mayor Dave Gordon		
	City Administrator –		
	City Attorney – Carol Morris		
	City Clerk – Brenda L. Martinez		
	Finance – May Miller		
	Public Works – Seth Boettcher		
	Economic Devel. – Andy Williamson		
	Police – Kiblinger		X
Court – Stephanie Metcalf			
Attachments: Resolution No. 14-961; supporting materials			
SUMMARY STATEMENT: Active shooter incidents are becoming more frequent. While they still are rare events, we know an active shooting event can occur at any time or any place. This gear will provide officers with the tools they need to mitigate their risk when responding to an active shooter or high threat situation. The active shooter gear includes the following: Vest: the vest itself will hold 3 extra magazines, a Kevlar plate to protect against rifle rounds, and a medical bag, The vest can be rapidly put on over the officer’s soft body armor. The medical equipment is a must because it will not get to the crisis area without an officer bringing it. The medical scissors are used for exposing wounds, and tourniquets are used to stop bleeding on extremities. Wound or bandage kits are used to plug the holes and tourniquets are used to stop bleeding.			
COMMITTEE REVIEW AND RECOMMENDATION:			
RECOMMENDED ACTION: MOTION to adopt Resolution No. 14-961, authorizing the Mayor to purchase active shooter equipment through Adamson Police Products.			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
July 17, 2014			

RESOLUTION NO. 14-961

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AUTHORIZING THE MAYOR TO PURCHASE ACTIVE
SHOOTER GEAR THROUGH ADAMSON POLICE
PRODUCTS**

WHEREAS, the Black Diamond Police Department would like provide its officers with gear that will mitigate their risk when responding to an active shooter or high threat situation;

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

Section 1. The Mayor is hereby authorized to purchase active shooter gear from Adamson police products.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 17TH DAY OF JULY, 2014.

CITY OF BLACK DIAMOND:

Dave Gordon, Mayor

Attest:

Brenda L. Martinez, City Clerk



Quotation

DATE Mar 28, 2014	PAGE 1
ORDER NUMBER CO021125	

3763 Imperial Street, Unit A
 Frederick, CO 80516
 PH: (877) 833-4699 FX: (303) 833-4762

Sold To	BLACK DIAMOND POLICE DEPARTMENT ATTN: GREG GORAL
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Ship To	
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REFERENCE	PO NUMBER	CUSTOMER NO CO-OS	SALESPERSON	ORDER DATE Mar 28, 2014	SHIP VIA	TERMS NETO30
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QUANTITY			ITEM NUMBER	DESCRIPTION	UNIT PRICE	UNIT	AMOUNT
ORD	SHIP	B / O					
8	0	8	715/TAC PH-MOLLE	TACTICAL PLATE HARNESS CARRIER BLACK	100.00	EA	800.00
8	0	8	715/2120-5	RIFLE PLATE, 10x12, LEVEL IIIA, NIJ .06, SHOOTER'S CUT WSCA CONTRACT PRICE	363.59	EA	2,908.72
8	0	8	300/PERSEVERANCE-B	PERSEVERANCE INDIVIDUAL TACTICAL AID KIT BLACK	98.44	EA	787.52
8	0	8	715/774	DELTA 4 COMBAT HELMET LEVEL IIIA	406.50	EA	3,252.00
			MC0009	FRIEGHT ON MERCHANDISE - COLORADO			50.00
8	0	8	715/TP5B	M4 MAG POUCH, TRIPLE BLACK	30.00	EA	240.00
This quote is valid for 60 days							

	Subtotal	8,038.24
	Total Sales Tax	0.00
	Total Order	8,038.24

Original

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: AB14-069 Resolution authorizing On Call planning contract with Parametrix	Agenda Date: July 17, 2014	
	AB14-069	
	Mayor Dave Gordon	
	City Administrator	
	City Attorney Carol Morris	
	City Clerk – Brenda L. Martinez	
	Com Dev/Nat. Res. – Aaron Nix	
	Finance – May Miller	
	MDRT/Ec Dev – Andy Williamson	X
	Police – Chief Kiblinger	
Cost Impact (see also Fiscal Note):	Public Works – Seth Boettcher	
Fund Source: MDRT budget	Court – Stephanie Metcalf	
Timeline:		
Agenda Placement: <input type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input checked="" type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: Resolution No. 14-962; contract		
SUMMARY STATEMENT: The City is in need of planning expertise help in the writing and hearings for the PP2C plat in The Villages. With the recent staff departures the MDRT team needs to hire a contract planner to fulfil its regulatory responsibilities. The MDRT team sought out proposals from two consulting firms and one placement firm and selected Parametrix. The proposed contract will be an hourly rate until PP2C has concluded its hearings. FISCAL NOTE (Finance Department): No additional Budget dollars are needed to fund the MDRT Planner. The recent re-organization included moving Mr. Nix to a single Funding agreement Community Development/Natural Resouce Position. This will allow the savings from the vacant Mr. Nix previous Funding Agreement Natural Resources position from July 1, 2014 to December 31, 2014 to be used for the Funding Agreement MDRT Planner position from July 14, 2014 through December 31, 2014. This will not require a dollar amount budget change as we will utilize the existing budget dollars.		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: Finance committee recommended forwarding to the full council for action.		
RECOMMENDED ACTION: MOTION to adopt Resolution No. 14-962, authorizing the Mayor to execute a consultant services agreement with Parametrix for a contract MDRT Planner.		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
July 17, 2014		

RESOLUTION NO. 14-962

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AUTHORIZING THE MAYOR TO EXECUTE A
CONSULTANT SERVICES CONTRACT WITH
PARAMETRIX FOR A MDRT PLANNER**

WHEREAS, the Master Development Review Team is in need of a contract senior planner to help process the phase 2 c plat of The Villages Master Plan development; and

WHEREAS, city staff has solicited responses from three consulting firms and city staff has decided on Parametrix to perform this duty; and

WHEREAS, city staff and the city attorney have reviewed the contract and the MDRT budget has sufficient funds; and

WHEREAS, Parametrix is willing and able to the perform the needed work;

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

Section 1. The Mayor is hereby authorized to execute a consultant services contract with Parametrix in an amount not exceed \$50,000.00 dollars, substantially in the form attached hereto at Exhibit A.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 17TH DAY OF JULY,
2014.**

CITY OF BLACK DIAMOND:

Dave Gordon, Mayor

Attest:

Brenda L. Martinez, City Clerk

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF BLACK DIAMOND AND
PARAMETRIX, INC. FOR TEMPORARY PLANNING SERVICES**

THIS AGREEMENT is made by and between the City of Black Diamond, a Washington municipal corporation (hereinafter the "City"), and Parametrix, (hereinafter the "Consultant,") a corporation organized under the laws of the State of Washington, located and doing business at 1019 – 39th Ave. S.E., Suite 100, Puyallup, WA 98374.

RECITALS

WHEREAS, the City is in need of day-to-day planning services on a temporary basis; and

WHEREAS, the Consultant has agreed to provide such services according to the terms of this Agreement;

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

TERMS

I. Description of Work.

The Consultant shall assign one Planner Gillian Zacharias to the City to perform on-call planning services on a temporary basis for the period identified in Section IV, or until the parties execute a new Agreement, or the City hires an employee to perform planning services, whichever is sooner, Provided: this shall not obligate the City to enter into any future Agreement with the Consultant. Such planning services shall include, but not be limited to, review of applications for legislative approvals, project permit applications, drafting staff reports to decision-makers, attending hearings and meetings relating to same, drafting public notices and other decision-documents and ensuring that project permit applications are timely reviewed and processed according to law.

The Consultant represents and warrants that it and any staff member or subconsultant assigned to the work will 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 subconsultant 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.

II. Payment

A. The City shall pay the Consultant an hourly rate of \$167.80 for one Planner, not to exceed \$50,000.00 for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in Exhibit A, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount.

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

III. Relationship of Parties

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

IV. Duration of Work

The City and the Consultant agree that work will begin on the tasks described in Section I immediately upon execution of this Agreement. The parties agree that the individual projects assigned to the Consultant may have individual deadlines for completion that must be met. This Agreement shall terminate on September 1, 2014 as provided in Section I.

V. Termination

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

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Consultant to the effective date of termination, as described on a final invoice submitted to the City. Said amount shall not exceed the amount in Section II above. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this Agreement, which records and data may be used by the City without restriction. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise.

VI. Discrimination

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

VII. Indemnification

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

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

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY

FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER. THE CONSULTANT'S WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS BY THE CONSULTANT'S EMPLOYEES DIRECTLY AGAINST THE CONSULTANT.

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

VIII. Insurance

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

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

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

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

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

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

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

E. Under this agreement, the Consultant's insurance shall be considered primary in the event of a loss, damage or suit. The City's own comprehensive general liability policy will be considered excess coverage with respect to defense and indemnity of the

City only and no other party. Additionally, the Consultant's commercial general liability policy must provide cross-liability coverage as could be achieved under a standard ISO separation of insured's clause.

F. The Consultant shall request from his insurer a modification of the ACORD certificate to include language that prior written notification will be given to the City of Black Diamond at least 3 days in advance of any cancellation, suspension or material change in the Consultant's coverage.

IX. Exchange of Information

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

X. Ownership and Use of Records and Documents

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

XI. City's Right of Inspection

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

XII. Consultant to Maintain Records to Support Independent Contractor Status

On the effective date of this Agreement (or shortly thereafter), the Consultant shall comply with all federal and state laws applicable to Independent contractors including,

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

XIII. Work Performed at the Consultant's Risk

The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of the work hereunder and shall utilize all protection necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.

XIV. Non-Waiver of Breach

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

XV. Resolution of Disputes and Governing Law

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

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

XVI. Written Notice

All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the agreement, unless notified to the contrary. Unless otherwise specified, any written notice hereunder shall become effective upon

the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated below:

CONSULTANT:

Parametrix Inc.
1019 – 39th Avenue S.E. Suite 100
Puyallup, WA 98374

Austin Fisher
253-604-6600

CITY:

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

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

XVII. Assignment

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

XVIII. Modification and Severability

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

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

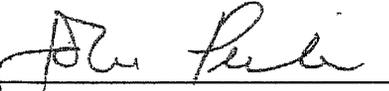
XIX. Entire Agreement

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

IN WITNESS WHEREOF, the parties have executed this Agreement on this ____ day of _____, 2014.

CONSULTANT

CITY OF BLACK DIAMOND

By: 
Its Transportation
Division Manager

By: _____
Dave Gordon, Mayor

Consultant:

Parametrix, Inc.
1019 – 39th Ave. S.E., Suite 100
Puyallup, WA 98374

APPROVED AS TO FORM:

City Attorney's Office

ATTEST:

City Clerk

