

Title 8

HEALTH AND SAFETY

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Chapter 8.02

CODE ENFORCEMENT

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8.02.010 Purpose.

The purpose of this chapter is to establish an efficient system of enforcing city regulations that will enable violations to be promptly resolved whenever possible, while providing both appropriate penalties and a full opportunity for alleged violators to have a hearing to contest the violations. This chapter shall apply to all regulations as defined in Section 8.02.020; provided, a violation of any regulation of the Black Diamond Municipal Code may be prosecuted as a criminal violation at the city's discretion, pursuant to Section 8.02.030. (Ord. No. 898, § 2(Exh. A), 4-16-2009)

8.02.020 Definitions.

As used in this chapter, the following words, terms, and phrases shall have the meanings ascribed to them in this section, unless a different meaning is plainly required:

A. *Abate* means to act to stop an activity, and/or to repair, replace, remove, or otherwise remedy a condition, where such activity or condition constitutes a violation of a regulation; provided, the actions must resolve the violation to the satisfaction of the city, and the actions taken to abate and the manner in which they are performed must not endanger the general health, safety, and welfare of the community. For the purposes of this chapter, the verbs "abate" and "correct" shall be interchangeable and have the same meaning.

B. *Act* means doing or performing something.

C. *City* means City of Black Diamond, Washington.

D. *Code enforcement officer* means any person or persons authorized by statute, ordinance, regulation, written city policy, or interlocal agreement, or designated by the mayor or his or her designee, to enforce any of the regulations subject to the enforcement and penalty provisions of this

chapter, and shall expressly include the city's code enforcement officers; the city attorney, or his or her designee; the chief of the Black Diamond police department, or his or her designee; the director of the community development department, or his or her designee; the director of the public works department, or his or her designee; building inspectors; construction inspectors; and the chief of King County Fire District #44, or his or her designee.

E. *Correction notice* means a written statement, issued by a code enforcement officer, notifying a person that property under his or her control is in violation of one or more regulations, and informing such person that a notice of violation may be issued and/or criminal charges filed if the violations are not abated.

F. *Day or days*, as used in this chapter, shall mean calendar days unless expressly stated otherwise in a given section or subsection. Any portion of a twenty-four-hour day shall constitute a full calendar day.

G. *Hearing examiner* means the Black Diamond hearing examiner and the office thereof established pursuant to Chapter 2.30.

H. *Notice of violation* or *notice of civil violation* means a written statement, issued by a code enforcement officer, which contains the information required under Section 8.02.080, and which notifies a person that he or she is responsible for one or more violations of the Black Diamond Municipal Code.

I. *Omission* means a failure to act.

J. *Person* means any individual, firm, business, association, partnership, corporation or other legal entity, public or private, however organized. Because "person" shall include both human and non-human entities, any of the following pronouns may be used to describe a person: he, she, or it.

K. *Person responsible for the violation* means any of the following: a person who has titled ownership or legal control of the property or structure that is subject to the regulation; an occupant or other person in control of the property or

structure that is subject to the regulation; a developer, builder, business operator, or owner who is developing, building, or operating a business on the property or in a structure that is subject to the regulation; or any person who created, caused, or has allowed the violation to occur.

L. *Regulation* means and includes any of the following, as now enacted or hereafter amended:

1. All standards, regulations, rules, requirements and procedures adopted by the city under this municipal code; and

2. Any provision of the municipal code making reference to this chapter; and

3. The terms and conditions of any permit or approval issued by the city, or any concomitant agreement with the city pursuant to code provisions that make reference to this chapter.

M. *Repeat violation* means, as evidenced by the prior issuance of a correction notice or a notice of violation, that a violation has occurred on the same property within a two-year period, or a person responsible for a violation has committed a violation elsewhere within the City of Black Diamond within a two-year period. To constitute a repeat violation, the violation need not be the same type of violation as the prior violation.

N. *Violation* or *civil violation* means an act or omission contrary to "regulation," as that term is defined in this chapter. A violation continues to exist until abated to the satisfaction of the city, with each day or portion thereof in which the violation continues constituting a separate violation.

(Ord. No. 898, § 2(Exh. A), 4-16-2009)

8.02.030 Violation unlawful—Each day is separate violation—Misdemeanor.

The violation of any regulation shall be unlawful. Each day, or portion thereof, in which the violation exists constitutes a separate offense for which separate notices of violation may be issued. In addition, any violation of this chapter shall constitute a misdemeanor; provided, the city attorney, or the city attorney's designee, shall, at his or her discretion, have authority to file a violation as

either a civil violation pursuant to this chapter, or as a criminal misdemeanor punishable by imprisonment in jail for a maximum term fixed by the court of not more than ninety days, or by a fine in an amount fixed by the court of not more than one thousand dollars, or by both such imprisonment and fine. All criminal misdemeanor charges filed under this chapter shall be filed with the Black Diamond Municipal Court. When the city files criminal misdemeanor charges pursuant to this chapter, the city shall have the burden of proving, beyond a reasonable doubt, that the violation occurred.

(Ord. No. 898, § 2(Exh. A), 4-16-2009)

8.02.040 Joint and several responsibility and liability.

Responsibility for violations subject to enforcement under this chapter is joint and several, and the city is not prohibited from taking action against a party where other persons may also be potentially responsible for a violation, nor is the city required to take action against all persons potentially responsible for a violation.

(Ord. No. 898, § 2(Exh. A), 4-16-2009)

8.02.050 Interference with code enforcement unlawful—Misdemeanor.

Any person who intentionally obstructs, impedes, or interferes with any lawful attempt to serve notice of a violation, stop work or stop use order, or an emergency order, or intentionally obstructs, impedes, or interferes with lawful attempts to correct a violation shall be guilty of a misdemeanor punishable by imprisonment in jail for a maximum term fixed by the court of not more than ninety days or by a fine in an amount fixed by the court of not more than one thousand dollars, or by both such imprisonment and fine.

(Ord. No. 898, § 2(Exh. A), 4-16-2009)

8.02.060 Methods of service.

A. *Service by regular first class mail shall be equal to personal service.* Any correction notice, notice of violation, notice of hearing, or other

code enforcement document shall be deemed legally served upon a party by use of regular first class mail, as described in subsection (B)(2) of this section, unless another method of service is expressly required in a particular subsection of this chapter; provided, at the discretion of the code enforcement officer, the code enforcement officer may personally serve documents or cause documents to be personally served upon a party.

B. *Methods of service defined.* For purposes of this chapter, the methods of service of any documents related to code enforcement, such as correction notices, notices of violation, stop work orders, etc. (hereinafter "document"), are defined as follows:

1. *Personal service.* Personal service shall mean handing the document to the person subject to the document or leaving it at his or her dwelling or usual place of abode with some person of suitable age and discretion then residing therein, or leaving it at his or her office or place of employment with a person in charge thereof. Personal service shall also be deemed complete when the hearing examiner or his or her assistant hands any order, ruling, decision, or other document to a person prior to, during, or after a hearing.

2. *Mailing.* Service by mail shall mean sending the document by regular first class mail to the last known address of the person subject to the document. The last known address shall be an address provided to the city by the person to whom the document is directed; if an address has not been provided to the city, the last known address shall be any of the following as they appear at the time the document is mailed: the address of the property where the violation is occurring, as reflected on the most recent equalized tax assessment roll of the county assessor or the taxpayer address appearing for the property on the official property tax information website for King County; the address appearing in any database used for the payment of utilities for the property at which the violations are occurring; or the address of the person to whom the documents are being sent that appears in the Washington State Department of

Licensing database. Where service of the notice of violation is by mail, service shall be deemed complete upon the third day following the day upon which they are placed in the mail, unless the third day falls on a Saturday, Sunday, or legal holiday, in which event service shall be deemed complete on the first day other than a Saturday, Sunday, or legal holiday following the third day.

3. *Posting.* Posting shall mean affixing a copy of the document in a conspicuous place on the property, with at least one copy of such document placed at an entryway to the property or structure if an entryway exists.

4. *Publication.* Publication of the document shall mean publication as set forth in RCW 4.28.100 and 4.28.110, as currently enacted or hereafter amended.

C. *Proof of service—Due diligence.* Proof of service shall be made by written affidavit or declaration under penalty of perjury executed by the person effecting the service, declaring the time and date of service, the manner by which service was made, and if service was made solely by posting or publication, facts showing that due diligence was used in attempting to locate a mailing address for the person at whom the notice of violation is directed.

D. *Additional proof of service not necessary.* The hearing examiner shall not require additional proof of service beyond the requirements in this chapter.

(Ord. No. 898, § 2(Exh. A), 4-16-2009)

8.02.070 Voluntary correction—Correction notice.

A. *General.* Prior to the issuance of a notice of violation, the code enforcement officer shall attempt to secure the voluntary correction of a violation by attempting to contact the person responsible for the violation, explaining the violation, and requesting correction. This may be done verbally by the code enforcement officer; provided, a written correction notice shall be served on the person responsible for the violation prior to issuance of a notice of violation; provided further,

a written correction notice need not be served nor efforts made to secure voluntary correction where the nature of the violation creates a risk of imminent harm to public health or safety, or where it is a repeat violation as defined in this chapter.

B. *Service of correction notice.* Service of a written correction notice may be accomplished by regular first class mail or by personal service, at the discretion of the code enforcement officer, or by posting or publishing the correction notice if an address for the person responsible for the violation cannot be ascertained pursuant to Section 8.02.060.B.2.

C. *Contents of written correction notice.* The written correction notice shall be deemed sufficient if it contains the following information:

1. The name and address of a person responsible for the violation; and

2. The street address or description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring; and

3. A description of the violation and a reference to the code provisions that have been violated; and

4. A statement indicating what corrective actions are required and a correction deadline stating the date and time by which the corrective actions must be completed to the satisfaction of the code enforcement officer in order for the violator to avoid the issuance of a notice of violation; and

5. A statement indicating that, pursuant to Section 8.02.030, a notice of violation may be issued for each day a violation continues, with each violation constituting a separate offense subject to civil and/or criminal penalties.

D. *Time period in which to correct or abate the violation.* Whenever a person responsible for a violation is served with a written correction notice, he or she shall be given at least ten days from the date of issuance of the notice to correct the violation(s) to the satisfaction of the code enforcement officer; provided, where, in the opinion of the code enforcement officer, a violation creates a

risk of imminent harm to public health or safety, or is a repeat violation as defined in this chapter, the city can require less than ten days for correction to be completed. In the event the violation is not corrected within the required time period, the city may, at its discretion, issue separate notices of violation for each day, or portion thereof, that the violation has existed or continues to exist.

E. *Extension of voluntary correction period or modification of required actions.* An extension of the deadline for voluntary correction, or a modification of any required corrective action noted in the written correction notice, may be granted by the code enforcement officer if the person responsible for the violation has, in the opinion of the code enforcement officer, shown due diligence or made substantial progress in correcting the violations but unforeseen circumstances render correction unattainable within the original deadline.

F. *Revocation of deadline for compliance.* The original deadline for compliance, or any extension for compliance previously granted by the code enforcement officer, may be revoked and immediate compliance required where, in the opinion of the code enforcement officer, circumstances make immediate correction necessary to avoid an imminent risk of injury to persons or property.

G. *Use of written voluntary correction agreement.*

1. [*Voluntary correction agreement.*] At the sole discretion of the city, a voluntary correction agreement may be entered into between the person responsible for the violation and the city. The voluntary correction agreement must be in writing.

2. *Contents of voluntary correction agreement.* The voluntary correction agreement is a contract between the city and the person responsible for the violation under which that person agrees to abate the violations within a specified time and according to specified conditions. The voluntary correction agreement shall include the following:

a. The name and address of the person responsible for the violation; and

b. The street address or a description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring; and

c. A description of the violation and a reference to the regulations that have been violated; and

d. An acknowledgement by the person responsible for the violations that the violations described in the correction agreement exist, and that he or she is waiving the right to contest the existence of the violations or to mitigate the penalties; and

e. The necessary corrective action to be taken, the date or time by which correction must be completed, and an acknowledgement by the person responsible for the violation that he or she will correct the violations within the time specified in the voluntary correction agreement; and

f. Acknowledgement by the person responsible for the violation that the city may enter the property and inspect the premises as may be necessary to determine compliance with the voluntary correction agreement; and

g. Acknowledgement by the person responsible for the violation that if the terms of the voluntary correction agreement are not met, the city may enter the property to abate the violation and may also recover its costs and expenses and/or a monetary penalty pursuant to this chapter from the person responsible for the violation; and

h. The signature or official mark of the person responsible for the violation and the signature or official mark of the code enforcement officer.

3. *Failure to comply with voluntary correction agreement.*

a. *Abatement by the city.* In addition to any other remedy provided for in this chapter, the city may abate the violation in accordance with Section 8.02.230 if the terms of the voluntary correction agreement are not met.

b. *Penalties and costs.* If the terms of the voluntary correction agreement are not met, the person responsible for the violation may be assessed a monetary penalty in accordance with Sec-

tion 8.02.200, plus all costs and expenses of abatement, as set forth in Section 8.02.230, in addition to being issued new notices of violation or criminal charges if the violation has not been abated. (Ord. No. 898, § 2(Exh. A), 4-16-2009)

8.02.080 Notice of violation.

A. *Issuance of notice of violation.* When the city determines that a violation has occurred or is occurring, and does not secure voluntary correction pursuant to Section 8.02.070, the code enforcement officer may issue a notice of violation to any person responsible for the violation.

B. *Contents of notice.* The notice of violation shall include the following:

1. The name and address of a person responsible for the violation; and

2. The street address or description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring; and

3. A description of the violation and a reference to the provisions violated; and

4. A statement indicating that the violator must respond to the notice of violation within fourteen days of the date of issuance by doing one of the following:

a. Paying the fine and correcting the violation; or

b. Requesting a mitigation hearing and correcting the violation; or

c. Requesting a hearing to contest the violation; and

5. A statement indicating that failure to respond shall result in the violation(s) being deemed committed without requiring further action by the city, and that the full fine amount indicated on the notice of violation shall be due and owing to the city by the person or entity to whom the notice of violation was issued; and

6. A statement indicating that, unless a request to contest the violation or to mitigate the penalty is properly filed, a monetary penalty of five hundred dollars for each violation listed on the notice of violation is due and owing at the time

the notice of violation is issued, and must be paid in full within thirty days or may be assigned to a collection agency; and

7. A statement indicating that if the person or entity to whom a notice of violation was issued requests a hearing and fails to attend the hearing, a default judgment shall be entered against the person or entity to whom the violation was issued, with the full amount of the fine indicated on the notice of violation immediately due and owing, and that any unpaid fines and any costs may be assigned to a collection agency after thirty days have elapsed from the date the notice of violation was issued; and

8. A statement indicating that the city may seek to recover from the person to whom the notice of violation was issued the costs to the city of any abatement action taken; and

9. A statement indicating that separate notices of violation may be issued for each day, or portion thereof, in which a violation continues; and

10. A statement indicating that payment of a monetary penalty does not relieve the person or entity named in the notice of violation of the duty to abate the violation, and that failure to abate may result in the issuance of additional notices of violation and/or criminal charges, with additional civil and/or criminal penalties.

C. *Service of notice of violation.* Service of a notice of violation may be accomplished by regular first class mail or by personal service, at the discretion of the code enforcement officer, or by posting or publication if an address for the person responsible for the violation cannot be ascertained, pursuant to Section 8.02.060.

(Ord. No. 898, § 2(Exh. A), 4-16-2009)

8.02.090 Stop work order—Violation a misdemeanor.

A stop work order may be issued pursuant to any of the codes or regulations adopted pursuant to Titles 14, 15, 17, 18 and 19. In addition, the code enforcement officer may issue a stop work order whenever any work that is (a) subject to

regulation under the Black Diamond Municipal Code, or (b) subject to any condition of approval by the city or by an order of the hearing examiner is, in the opinion of the code enforcement officer, being performed in a manner contrary to the provisions of the Municipal Code, or will exacerbate damage that has already been caused to any property, or will materially impair the code enforcement officer's ability to seek compliance. The stop work order shall state the reasons for the order and may be appended to, or incorporate by reference, a notice of violation. The stop work order shall take effect immediately upon service. Service of the stop work order shall be deemed accomplished upon posting of the notice in the manner described in Section 8.02.060.B.3. Violation of a stop work order shall constitute a misdemeanor, punishable by imprisonment in jail for a maximum term fixed by the court of not more than ninety days, or by a fine in an amount fixed by the court of not more than one thousand dollars, or by both such imprisonment and fine. (Ord. No. 898, § 2(Exh. A), 4-16-2009)

8.02.100 Stop use order—Violation a misdemeanor.

In addition to any remedy provided for in this chapter, the code enforcement officer may issue a stop use order when allowing the use to continue creates an imminent threat of injury to the health, safety, or welfare of any member of the public, or creates an imminent threat of harm to neighboring property, or will exacerbate injury already caused to any property. The stop use order shall state the reasons for the order; provided, the stop use order may be appended to, or incorporate by reference, a notice of violation. The stop use order shall take effect immediately upon service. Service of the stop use order shall be deemed accomplished upon posting of the notice in the manner described in Section 8.02.060.B.3. Violation of a stop use order shall constitute a misdemeanor, punishable by imprisonment in jail for a maximum term fixed by the court of not more than

ninety days, or by a fine in an amount fixed by the court of not more than one thousand dollars, or by both such imprisonment and fine. (Ord. No. 898, § 2(Exh. A), 4-16-2009)

8.02.110 Removal of stop work or stop use order—Misdemeanor.

Where a stop work order or a stop use order has been posted in conformity with the requirements of this chapter, removal of such order without the authorization of the city, or the hearing examiner if the matter has been heard by the hearing examiner, shall constitute a misdemeanor, punishable by imprisonment in jail for a maximum term fixed by the court of not more than ninety days, or by a fine in an amount fixed by the court of not more than one thousand dollars, or by both such imprisonment and fine. (Ord. No. 898, § 2(Exh. A), 4-16-2009)

8.02.120 Response to notice of violation.

A. *Time limit.* A person who has been served with a notice of violation must respond to the notice within fourteen days of the date the notice is served. A person may respond to the notice of violation by:

1. Paying the amount of the monetary penalty as set forth in the notice of violation. Partial payment or payment using a check that is rejected for insufficient funds shall not be deemed payment under this subsection. Payment of the fine shall not relieve the person or entity responsible for the violation from the duty to correct or abate the violation. Additional notices of violation may be issued if the violation goes uncorrected.

2. Contesting the notice of violation by requesting a contested hearing in writing and sending or hand-delivering the request to the city as described in subsection (B) of this section, along with the required filing fee.

3. Seeking to mitigate the monetary penalty by requesting a mitigation hearing to explain the circumstances surrounding the violation. The request to mitigate must be made in writing and sent or hand-delivered to the city as described in sub-

section (B) of this section. Requesting to mitigate the penalty shall not relieve the person responsible for the violation from the duty to correct or abate the violation. Additional notices of violation may be issued if the violation goes uncorrected.

B. *Method of response.* The person or entity to whom a notice of violation has been issued may respond by mailing or hand-delivering the response to the city's community development department. Mailed responses must be postmarked no later than the fourteenth day from the date of service of the notice of violation; hand-delivered responses must be brought to the city's community development department no later than 4:30 p.m. on the fourteenth day after service; provided, where the fourteenth day falls on a weekend or holiday, the deadline shall be extended to the next regular business day. Telephone, facsimile, or email responses shall not satisfy the requirements of this section.

(Ord. No. 898, § 2(Exh. A), 4-16-2009)

8.02.130 Failure to respond.

If the person to whom the notice of violation is issued fails to respond as required in Section 8.02.120, the violations shall be deemed committed without requiring further action by the city or the city's hearing examiner and the person to whom the notice of violation was issued shall owe the full fine amount indicated in the notice of violation.

(Ord. No. 898, § 2(Exh. A), 4-16-2009)

8.02.140 Mitigation hearing—Scheduling—Procedure.

The city's director of community development shall schedule and conduct a hearing to mitigate the penalty on a violation when such hearing is properly and timely requested. The hearing shall be scheduled to occur within thirty days of receipt of a proper mitigation request. Notice of the hearing date and time shall be served by regular first class mail to the address of the party who requested the hearing. The date and time for any hearing may be rescheduled by the hearing examiner for good cause upon the motion of a party or

the hearing examiner. The mitigation hearing shall be conducted according to the following general procedures:

A. The person responsible for the violation shall, as a condition of proceeding with the mitigation hearing, agree that he or she has committed the violations as set forth in the notice of the violation. The city shall be relieved of any burden of proving that the violations were committed.

B. If the person who has requested the mitigation hearing decides at the time of the hearing that he or she wishes to contest all or some of the alleged violations, the matters wishing to be contested shall be rescheduled to be heard by the hearing examiner; provided, the required filing fee must be paid in full within five calendar days; if the filing fee is not paid, the violations shall automatically be deemed committed.

C. The person responsible for the violations shall be given the opportunity to explain or provide evidence regarding the nature of the violations, why the violations exist, why the violations have not been abated or corrected, and any other information the community development director determines is relevant.

D. The city shall be given the opportunity, at its discretion, to provide evidence of the nature of the violation, evidence to rebut assertions made by any party, and any other information or evidence the community development director deems is relevant.

E. At the conclusion of the hearing, the community development director shall issue an order finding the violations committed, and shall assess a monetary penalty for each violation pursuant to Section 8.02.190. Based on the evidence and testimony presented at the hearing, the community development director may reduce the monetary penalty, but is not required to do so.

(Ord. No. 898, § 2(Exh. A), 4-16-2009)

8.02.150 Contested hearing—Filing fee—Scheduling—Correction prior to hearing.

A. *Filing fee.* The written request for a contested hearing must be accompanied by payment

of a twenty-five dollar filing fee. This fee is non-refundable and is used to defray the costs of the hearing.

B. *Notice and scheduling of contested hearing.* Upon timely filing of a request for a hearing and payment of the filing fee, the matter shall be scheduled to be heard at least fourteen but no later than sixty calendar days after the date the request was received by the city. Notice of the hearing date and time shall be served by regular first class mail to the last known address of the party who requested the hearing. The date and time for any hearing may be rescheduled by the hearing examiner for good cause upon the motion of a party or the hearing examiner.

C. *Correction of violation prior to hearing.* The hearing may be cancelled and the party requesting the hearing need not appear only if, at least two business days prior to the scheduled hearing, the code enforcement officer determines that the violation has been satisfactorily corrected or abated and the monetary penalty paid in full. Where the scheduled hearing involves a repeat violation as defined in this chapter, the hearing shall not be cancelled unless the new violation has been corrected or abated to the satisfaction of the code enforcement officer and the monetary penalty and costs for the new violation(s) and any monetary penalty and costs owing for the previous violation(s) have been paid in full. (Ord. No. 898, § 2(Exh. A), 4-16-2009)

8.02.160 Contested hearing—Procedure.

The hearing examiner shall conduct a hearing to contest a violation when such hearing is properly and timely requested. The city and the person or entity to whom the notice of civil violation was issued may participate in the hearing and each party, or its legal representatives, may call witnesses and present evidence and rebuttal, subject to the following:

A. The city shall have the burden of proving, by a preponderance of the evidence, that a violation has occurred.

B. The parties are responsible for securing the appearance of any witnesses they may wish to call; neither the city nor the hearing examiner shall have the burden of securing any witnesses on behalf of the person who is contesting the violation(s).

C. Because formal rules of evidence shall not apply to any such hearing, the hearing examiner shall allow hearsay testimony by the parties and not require proof of chain of custody for evidence that is presented; provided, the hearing examiner shall determine the weight to be assigned to any evidence presented.

D. Any notes, reports, summaries, photographs, or other materials prepared by the parties shall be admitted into evidence if requested; provided, the parties are free to argue the weight that should be assigned by the hearing examiner to any evidence submitted.

E. At any time during the hearing, the person responsible for the violation may request to mitigate, rather than contest, a violation. However, the hearing examiner must impose penalties and costs for each mitigated violation according to Section 8.02.190.

(Ord. No. 898, § 2(Exh. A), 4-16-2009)

8.02.170 Contested hearing—Decision of the hearing examiner.

A. *Contents of order.* Upon the conclusion of a hearing to contest a violation, the hearing examiner may issue a verbal decision pending issuance of the written decision; if necessary, the hearing examiner may delay issuing the written order for up to ten business days following the hearing. In either event, the verbal decision and written order shall contain findings and conclusions based on the record that includes the following information:

1. For each alleged violation of the city code, a statement indicating whether the violation has been found committed or not committed;

2. For violations found committed, the monetary penalties and costs being assessed pursuant to this chapter;

3. For violations found committed, any required corrective actions;

4. For violations found committed, a finding that abatement of the violations by the city is authorized, at the expense of the person responsible for the violations; and

5. A statement notifying the person responsible for the violation that he or she is subject to additional civil and/or criminal penalties if any violation that was the subject of the hearing has not been corrected or abated.

B. Notice of decision. The hearing examiner may cause a copy of the decision and order to be served upon the parties at the close of the hearing. When the hearing examiner requires more time to prepare a written order, or when a party fails to appear after requesting a contested hearing, the hearing examiner shall cause a copy of the decision and order to be served on the parties by mailing a copy to each party's last known address within ten business days of the hearing. (Ord. No. 898, § 2(Exh. A), 4-16-2009)

8.02.180 Failure to appear—Default order.

A. If the person who requests a hearing to mitigate the penalty then fails to appear at the scheduled hearing after having been given notice in the manner provided for by this chapter, the full penalty amount indicated in the notice of violation for each violation shall become immediately due and owing.

B. If the person who requests a hearing to contest the violation(s) then fails to appear after having been given notice in the manner provided for by this chapter, the hearing examiner shall use a standard form to immediately issue a default order, which finds committed all the violations set forth in the notice of violation, and which assesses a fine in the full amount indicated in the notice of violation. In addition, at the request of the city, the hearing examiner shall also impose upon the non-appearing party any costs to the city related to preparation for the hearing. The hearing examiner shall cause a copy of the decision to be served upon the non-appearing party by mailing a copy

to the last known address of the non-appearing party within ten business days of the hearing. Upon the motion of a party, the hearing examiner may rescind a default judgment only upon a showing of good cause to do so, and only if such motion has been brought within fourteen calendar days of the date of the hearing at which the default judgment was ordered.

(Ord. No. 898, § 2(Exh. A), 4-16-2009)

8.02.190 Monetary penalty.

A. Monetary penalty. Each violation of a city regulation deemed committed is subject to a monetary penalty in an amount of five hundred dollars unless a different penalty amount for a given violation is expressly authorized or required by a more specific city code provision. Except where the person responsible for the violation has admitted the violation and requested mitigation of the monetary penalty prior to commencement of a contested hearing on the matter, the hearing examiner shall have no authority to reduce the amount of the monetary penalty. Where the person has requested to mitigate the monetary penalty prior to commencement of a contested hearing on the matter, the examiner may reduce the monetary penalty for each violation, but in no case shall the penalty be reduced to an amount less than one hundred dollars for each violation found committed.

B. Costs. In addition to the monetary penalty, the hearing examiner shall also impose any costs requested by the city related to preparation and conduct of the contested hearing.

C. Payment of monetary penalty. Any monetary penalties assessed pursuant to this chapter constitute a personal obligation of the person to whom the notice of civil violation is directed. In addition, the monetary penalties assessed pursuant to this chapter may be assessed against the property that is the subject of the enforcement action. Any monetary penalty assessed must be paid in full to the city within thirty days from the date of service of an uncontested notice of violation or any order of the hearing examiner that assesses monetary penalties.

D. *Collection of monetary penalty—Use of collection agency.* The city is authorized to take legal action to collect the monetary penalty. Pursuant to Chapter 19.16 RCW, as currently enacted or hereafter amended, the city may, at its discretion, use a collection agency for the purposes of collecting penalties and costs assessed pursuant to this chapter. The collection agency may add fees or interest charges to the original amount assigned to collections as allowed by law. No debt may be assigned to a collection agency until at least thirty calendar days have elapsed from the time that the city attempts to notify the person responsible for the debt of the existence of the debt and that the debt may be assigned to a collection agency for collection if the debt is not paid. Notice of potential assignment to collections shall be made by regular first class mail to the last known address of the person responsible for the violation; provided, inability to ascertain a current mailing address shall not prohibit the debt from being assigned to collections.

E. *Continuing duty to abate violations.* Payment of a monetary penalty pursuant to this chapter does not relieve the person responsible for the violation of the duty to correct or abate the violation. Additional notices of violation may be issued and/or criminal charges filed for continuing failure to correct or abate a violation. (Ord. No. 898, § 2(Exh. A), 4-16-2009)

8.02.200 Appeals.

An appeal of the decision of the hearing examiner must be filed with the King County Superior Court within twenty-one calendar days of service of the decision, and this shall be the exclusive means to appeal a decision of the hearing examiner rendered under this chapter. (Ord. No. 898, § 2(Exh. A), 4-16-2009)

8.02.210 Repeat violation or failure to abate—Misdemeanor.

Where a person or entity has been found to have committed a violation under this chapter, regardless of whether the violation was resolved

without penalty, the failure to abate the violation, or the commission of a subsequent violation, or the violation of a written order of the hearing examiner after having received notice of the order as provided in this chapter, shall each constitute a repeat violation and shall each be a misdemeanor subject to the penalties and provisions of Section 8.02.030. The city attorney, or the city attorney's designee, shall, at his or her discretion, have authority to file a repeat violation as either a civil violation or as a misdemeanor.

(Ord. No. 898, § 2(Exh. A), 4-16-2009)

8.02.220 Abatement.

A. *Other abatement proceedings not precluded.* Nothing in this chapter shall prohibit the city from pursuing abatement of a violation pursuant to any other laws of the State of Washington or the City of Black Diamond.

B. *Costs of abatement.* The costs of any abatement action taken by the city shall become a charge to the person responsible for the violation. These charges may be assessed against the person responsible for the violation or the property upon which the violation occurred, or both. The city may use any lawful means to collect these charges. (Ord. No. 898, § 2(Exh. A), 4-16-2009)

8.02.230 Additional enforcement procedures.

The provisions of this chapter are not exclusive, and may be used in addition to other enforcement and penalty provisions authorized by the Black Diamond Municipal Code or any other law. (Ord. No. 898, § 2(Exh. A), 4-16-2009)

8.02.240 Conflicting code provisions.

In the event a conflict exists between the enforcement provisions of this chapter and the enforcement provisions of any international or uniform code, statute, or regulation that is adopted in the Black Diamond Municipal Code and subject to the enforcement provisions of this chapter, the enforcement provisions of this chapter will pre-

vail, unless the enforcement provisions of this chapter are preempted or specifically modified by said code, statute, or regulation.

(Ord. No. 898, § 2(Exh. A), 4-16-2009)

8.02.250 Duty not creating liability.

No provision or term used in this chapter is intended to impose any duty upon the city or any of its officers or employees which would subject them to damages in a civil action.

(Ord. No. 898, § 2(Exh. A), 4-16-2009)

Chapter 8.04

FIREWORKS

Sections:

- 8.04.010 Definitions.
- 8.04.020 Acts prohibited without a permit.
- 8.04.030 Application for permit.
- 8.04.040 Investigation, report on permit application.
- 8.04.050 Fire chief may grant or deny permit—Conditions.
- 8.04.060 License required prior to issuance of permit.
- 8.04.070 Public display permit—Granted for exclusive purpose—Nontransferable.
- 8.04.080 Supervision of public displays.
- 8.04.090 Permit authorizes activities of salesmen, employees.
- 8.04.100 Dates and times common fireworks may be sold or discharged.
- 8.04.110 Sales of common fireworks.
- 8.04.120 All sales to be from temporary stands.
- 8.04.130 Standards for fireworks stands.
- 8.04.140 Fire nuisance where fireworks kept prohibited.
- 8.04.150 Approved storage facilities required.
- 8.04.160 Unlawful possession.
- 8.04.170 Sales or transfers of special fireworks.
- 8.04.180 Manufacture or sale of fireworks for out-of-state shipment.
- 8.04.190 Special effects for entertainment media.
- 8.04.200 Nonprohibited acts—Signal purposes, forest protection.
- 8.04.210 Revocation or suspension of permit.

8.04.220 Reckless discharge or use prohibited.

8.04.230 Penalties for violation.

8.04.240 Violation a separate, continuing offense.

8.04.010 Definitions.

Unless the context in which they are used otherwise requires, the following definitions shall govern the construction of the terms found in this chapter:

A. "Fireworks" means any composition or device, in a finished state, containing any combustible or explosive substance for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, and classified as common or special fireworks.

B. "Special fireworks" includes any fireworks designed primarily for exhibition display by producing visible or audible effects. The term includes fireworks commonly known as skyrockets, missile-type rockets, firecrackers, salutes and chasers and fireworks not classified as common fireworks.

C. "Common fireworks" means any fireworks designed primarily to produce visible or audible effects by combustion.

1. The term includes:

a. Ground and hand-held sparkling devices, including items commonly known as dipped sticks, sparklers, cylindrical fountains, cone fountains, illuminating torches, wheels, ground spinners, and flitter sparklers;

b. Smoke devices;

c. Fireworks commonly known as helicopters, aerials, spinners, Roman candles, mines, and shells;

d. Class C explosives classified on January 1, 1984, as common fireworks by the United States Department of Transportation.

2. The term does not include fireworks commonly known as firecrackers, salutes, chasers, skyrockets, and missile-type rockets.

D. "Agricultural and wildlife fireworks" includes fireworks devices distributed to farmers,

ranchers, and growers through a wildlife management program administered by the United States Department of the Interior.

E. "Public display of fireworks" means an entertainment feature where the public is admitted or permitted to view the display or discharge of special fireworks.

F. "Fire nuisance" means anything or any act which increases, or may cause an increase of, the hazard or menace of fire to a greater degree than customarily recognized as normal by persons in the public service of preventing, suppressing, or extinguishing fire; or which may obstruct, delay, or hinder, or may become the cause of any obstruction, delay or the hindrance to the prevention of or extinguishment of fire.

G. "License" means a nontransferable formal authorization which the State Fire Marshal is permitted to issue under RCW Chapter 70.77 to engage in the acts specifically designated therein.

H. "Permit" means the official permission granted by the city for the purpose of doing any act which is regulated by this chapter.

I. "Person" includes any individual, firm, partnership, joint venture, association, concern, corporation, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit.

J. "Manufacturer" includes any person who manufactures, makes, constructs, fabricates, or produces any fireworks article or device but does not include persons who assemble or fabricate sets or mechanical pieces in public displays of fireworks.

K. "Wholesaler" includes any person who sells fireworks to a retailer or any other person for resale and any person who sells special fireworks to public display permittees.

L. "Retailer" includes any person who, at a fixed location or place of business, sells, transfers, or gives common fireworks to a consumer or user.

M. "Pyrotechnic operator" includes any individual who by experience and training has demonstrated the required skill and ability for safely setting up and discharging public displays of fireworks.

N. "Fire chief" means the chief administrative officer of the fire department of the city or his designee who shall be the local fire official for purposes of RCW Chapter 70.77. (Ord. 294 § 1, 1984)

8.04.020 Acts prohibited without a permit.

No person shall do any of the following acts in the city without having first obtained and having in full force and effect a valid permit issued by the city to do so:

A. Manufacture, import, possess or sell any fireworks, including agricultural and wildlife fireworks, at wholesale or retail for any use, provided, however, no permit is required for the possession or use of common fireworks lawfully purchased at retail;

B. Discharge special fireworks at any place;

C. Make a public display of fireworks; or

D. Transport fireworks, except as a public carrier delivering to a permittee. (Ord. 294 § 2, 1984)

8.04.030 Application for permit.

A. Any person desiring to do any act set forth in Section 8.04.020 shall first make written application for a permit to the fire chief. The application for a permit shall be signed by the applicant. If the application is made by a partnership, it shall be signed by each partner of the partnership, and if the application is made by a corporation, it shall be signed by an officer of the corporation and bear the seal of the corporation.

The application shall be in such form as the fire chief shall require and shall include, at a minimum, the following information:

1. The true name, address and telephone number of the applicant;

2. A statement by the applicant that he or she is over the age of eighteen years of age;

3. A statement as to whether the applicant possesses a license issued by the State Fire Marshal to do the act for which the permit is sought, and the current status of the license;

4. The proposed location at which the applicant intends to perform the act for which the permit is sought; and

5. Such other information as the fire chief may require in order to make the investigation and report required by Section 8.04.040.

B. All applications for permits pursuant to this chapter shall be accompanied by a nonrefundable permit fee in the amount set forth in the city's consolidated list of fees, as authorized in Section 2.62.010. The city council finds that said charge is necessary to cover the legitimate administrative costs for permit processing and inspection.

C. All applicants for a permit to sell fireworks from a temporary stand shall post with the city a performance bond or cash deposit in an amount of no less than fifty dollars, conditioned upon the prompt removal of the temporary stand, which deposit shall be returned to the applicant only in the event he removes the temporary stand and cleans up all debris to the satisfaction of the proper officials of the city. In the event of his failure to do so, the performance bond or cash deposit shall be forfeited to the city. In no event shall the applicant be entitled to the return of the performance bond or cash deposit if he has failed to remove the temporary stand and clean up all debris by the thirteenth day of July of each year.

D. All applications for permits pursuant to this chapter shall be accompanied by a certificate of insurance coverage evidencing the carrying of a comprehensive general liability insurance policy in the amounts required by Chapter 70.77 RCW, as amended. Such general liability policy shall name the city as an additional named insured, must be in full force and effect for the duration of the permit, and shall include a provision prohibiting cancellation of the policy without thirty days' written notice to the city. The policy and certificate shall be in a form approved by the city attorney.

E. Applications for public displays of fireworks shall be made in writing at least ten days in advance of the proposed display. (Ord. 743 § 1, 2003; Ord. 550 § 1, 1995; Ord. 294 § 3, 1984)

8.04.040 Investigation, report on permit application.

It shall be the duty of the fire chief to make an investigation and prepare a report of his findings and conclusions for or against the issuance of the permit, together with his reasons therefor. In the case of an application for a permit for a public display of fireworks, the fire chief shall, in addition to any other investigation, make an investigation as to whether such display as proposed will be of such a character and will be so located that it may be hazardous to property or dangerous to any person. (Ord. 294 § 4, 1984)

8.04.050 Fire chief may grant or deny permit—Conditions.

The fire chief shall have the power, based upon the findings of his investigation, to grant or deny any application for a permit, or to subject the same to such reasonable conditions, if any, as he shall prescribe. (Ord. 294 § 5, 1984)

8.04.060 License required prior to issuance of permit.

No permit shall be issued unless the person applying therefor shall first have obtained and have in full force and effect a valid license issued by the State Fire Marshal, pursuant to RCW Chapter 70.77, to do the particular act or acts for which the permit is sought. (Ord. 294 § 6, 1984)

8.04.070 Public display permit—Granted for exclusive purpose—Nontransferable.

If a permit for the public display of fireworks is granted, the sale, possession and use of fireworks for the public display is lawful for that purpose only. No such permit granted shall be transferable. (Ord. 294 § 7, 1984)

8.04.080 Supervision of public displays.

Every public display of fireworks shall be handled or supervised by a pyrotechnic operator approved by the fire chief. (Ord. 294 § 8, 1984)

8.04.090 Permit authorizes activities of salesmen, employees.

The authorization to engage in the particular act or acts as conferred by a permit to a person shall extend to salesmen and other employees of such person. (Ord. 294 § 9, 1984)

8.04.100 Dates and times common fireworks may be sold or discharged.

A. No common fireworks shall be sold within the city except from twelve noon on the twenty-eighth day of June to eleven fifty-nine p.m. on the fourth day of July.

B. No common fireworks shall be discharged within the city except between the hours of nine a.m. and twelve midnight on the fourth day of July of each year. (Ord. 697 § 1, 2000; Ord. 294 § 10, 1984)

8.04.110 Sales of common fireworks.

No person shall sell common fireworks to a consumer or user thereof other than at a fixed place of business of a retailer for which a license and permit have been issued. (Ord. 294 § 11, 1984)

8.04.120 All sales to be from temporary stands.

All sales of common fireworks shall be from temporary stands, which shall not be erected prior to the eighteenth day of June of any year and which shall be removed or torn down not later than the sixteenth day of July of the same year. (Ord. 294 § 12, 1984)

8.04.130 Standards for fireworks stands.

The fireworks stands of all those persons engaging in the sale of common fireworks pursuant to a permit issued under this chapter shall conform to the following minimum standards and conditions:

A. Fireworks stands shall comply with all provisions of the building code and shall be constructed in such a manner so as not to endanger the safety of attendants and patrons.

B. No fireworks stand shall be located within fifty feet of any other building or structure, nor within one quarter of one mile of any gasoline station, oil storage tank or premises where flammable liquids are kept or stored.

C. Each fireworks stand must have at least two exits which shall be unobstructed at all times.

D. Each fireworks stand shall have, in a readily accessible place, at least two full buckets of water and/or a fire extinguisher duly approved in advance by the fire chief.

E. All weeds, grass and combustible material shall be cleared from the location of the fireworks stand and the surrounding area a distance of not less than twenty feet, measured from the exterior walls on each side of the fireworks stand.

F. No smoking shall be permitted in or near a fireworks stand, and the same shall be posted with proper "No Smoking" signs.

G. Each fireworks stand shall have an adult in attendance at all times that the stand is stocked. Stock from the stand shall not be removed or stored in any other building during the sales period without the express written approval of the fire chief.

H. No fireworks stand shall be located within a radius of one quarter mile from any other stand.

I. Each fireworks stand shall have provision for sufficient off-street parking, in the opinion of the fire chief, to avoid impeding continuous flow of traffic at entrances and exits from the premises.

J. Each fireworks stand shall post prominently a list of fireworks that may be sold to the public. (Ord. 294 § 13, 1984)

lawful period of sale as provided in his permit except in such places of storage as the fire chief shall approve. Unsold stocks of fireworks remaining after

8.04.140 Fire nuisance where fireworks kept prohibited.

No person shall allow any rubbish to accumulate in any premises where any fireworks are sold or stored or permit a fire nuisance to exist on such premises. (Ord. 294 § 14, 1984)

8.04.150 Approved storage facilities required.

It is unlawful for any person to store unsold stocks of fireworks remaining unsold after the

the authorized retail sales period from twelve noon on June 28th to twelve noon on July 6th shall be returned on or before July 31st of the same year to the approved storage facilities of a licensed fireworks wholesaler, to a magazine or storage place approved by the fire chief or to a place approved by the State Fire Chief. Upon receiving a written application at least ten days prior to the date of proposed storage, the fire chief shall investigate whether the character and location of the storage would constitute a hazard to any property or be dangerous to any person. Based upon the investigation, the fire chief may grant or deny any application for storage or to subject the same to such reasonable conditions, if any, as he shall prescribe. (Ord. 294 § 15, 1984)

8.04.160 Unlawful possession.

The possession of any class or kind of fireworks in violation of the provisions of this chapter is prohibited. (Ord. 294 § 16, 1984)

8.04.170 Sales or transfers of special fireworks.

No person shall sell or transfer any special fireworks to any person who is not a fireworks permittee as provided in this chapter. (Ord. 294 § 17, 1984)

8.04.180 Manufacture or sale of fireworks for out-of-state shipment.

This chapter does not prohibit any manufacturer, wholesaler, dealer, or jobber, having a license issued by the State Fire Marshal and a permit secured under the provisions of this chapter from manufacturing or selling any kind of fireworks for direct shipment out of this state. (Ord. 294 § 18, 1984)

8.04.190 Special effects for entertainment media.

This chapter does not prohibit the assembling, compounding, use and display of special effects of whatever nature by any person engaged in the production of motion pictures, radio or television

productions, theatricals or operas when such use and display is a necessary part of the production and such person possesses a valid permit issued by the city to purchase, possess, transport or use such fireworks. (Ord. 294 § 19, 1984)

8.04.200 Nonprohibited acts—Signal purposes, forest protection.

This chapter does not prohibit the use of flares or fuses in connection with the operation of motor vehicles, railroads, or other transportation agencies for signal purposes or illumination or for use in forest protection activities. (Ord. 294 § 20, 1984)

8.04.210 Revocation or suspension of permit.

A. Authority. The fire chief may at any time suspend or revoke any permit issued under the provisions of this chapter, if the permittee has:

1. Violated any of the provisions of this chapter by the person holding such permit or any of his servants, agents or employees;
2. Made any false statement or misrepresentation of fact in connection with obtaining the permit; or
3. Failed to obtain or has had any license required by the state to engage in any act prohibited by RCW Chapter 70.77 or this chapter to be done without a license, suspended or revoked; or
4. Has had any insurance coverage required by this chapter cancelled, revoked or lapsed.

B. Effective Date of Revocation. When the fire chief determines that there is cause for revoking or suspending any permit issued pursuant to this chapter, the fire chief shall notify the person holding such permit. The notice shall specify the grounds for the suspension or revocation of the permit. The suspension or revocation shall become effective immediately upon receipt of the notice of the permittee.

C. Appeal. The decision of the fire chief with respect to the revocation or suspension of any permit issued under this chapter shall be final. Any permittee whose permit is suspended or revoked may

appeal the decision of the fire chief to the King County Superior Court by filing such appeal within ten days of the date of the final decision of the fire chief. This shall be the exclusive remedy of any permittee under this chapter. (Ord. 294 § 21, 1984)

8.04.220 Reckless discharge or use prohibited.

It is unlawful for any person to discharge or use fireworks in a reckless manner which creates a substantial risk of death or serious physical injury to another person or damage to the property of another. (Ord. 294 § 22, 1984)

8.04.230 Penalties for violation.

Any person violating any of the provisions of this chapter shall, upon a finding that such violation was committed, be punished by a monetary penalty in a sum not exceeding five hundred dollars or imprisonment not to exceed one hundred eighty days or by both such fine and imprisonment. (Ord. 294 § 23, 1984)

8.04.240 Violation a separate, continuing offense.

A person commits a separate offense for each day during which he commits, continues or permits a violation of any provision of this chapter. (Ord. 294 § 24, 1984)

Chapter 8.08

SMOKING IN CITY HALL

Sections:

8.08.010 Smoking prohibited.

8.08.020 Applicability.

8.08.030 Violation.

8.08.040 Penalty.

8.08.010 Smoking prohibited.

All smoking, including cigarettes, pipes and cigars is prohibited within the City Hall of the city located at 25510 Lawson Street. (Ord. 174 § 1, 1975)

8.08.020 Applicability.

The prohibition of smoking within the City Hall applies to all rooms, hallways and any and all interior portions of the City Hall building. (Ord. 174 § 2, 1975)

8.08.030 Violation.

Violation of this chapter shall constitute a misdemeanor within the city. (Ord. 174 § 3, 1975)

8.08.040 Penalty.

Every person convicted of a violation of this chapter shall be punished by a fine of two dollars for each violation incident. (Ord. 174 § 4, 1975)

Chapter 8.12

NOISE

Sections:

- 8.12.010** Adoption of state law.
- 8.12.020** Copies of act on file.
- 8.12.030** Variance.
- 8.12.040** Public disturbance noises.

8.12.010 Adoption of state law.

RCW Chapter 70.107, entitled the "Noise Control Act of 1974," together with amendments thereof or additions thereto, is adopted by reference. (Ord. 310 § 1, 1985)

8.12.020 Copies of act on file.

Not less than three copies of RCW Chapter 70.107, and amendments and additions shall be on file for use and examination by the public in the office of the city clerk-treasurer of the city. (Ord. 310 § 2, 1985)

8.12.030 Variance.

A. A variance from the regulations in this chapter may be granted by the city council, after conducting a public hearing as set forth herein. A variance may only be granted if it is necessary to further a public purpose, no reasonable alternatives are available, and it is for the shortest time duration possible in order to accomplish the public purpose.

B. Prior to commencing any activity that would result in noise that would otherwise violate the conditions of this chapter, Section 8.16.010(Q) or Section 18.80.030, an application shall be made to the city clerk for a noise variance and the variance granted by the city council. The application shall be made on a form provided by the city and signed by the applicant. The applicant shall provide such information as will allow the council to make the findings required in subsection A above. The applicant shall pay the application fee set forth in the city's fee schedule at the time the application is filed.

C. The city council, before considering a noise variance request, shall conduct a public hearing, pro-

vided notice in the same manner is required for a variance from zoning code requirements. The council, after holding the public hearing, may grant, deny or modify the request, and may impose such conditions as it deems necessary to protect the public health, safety and welfare.

D. If a variance is granted, so long as the noise generated is in compliance with the variance conditions, the noise shall not be considered a violation of Section 8.16.010(Q). (Ord. 773 § 1, 2004)

8.12.040 Public disturbance noises.

A. General Prohibition. It is unlawful for any person to cause, or for any person in possession of property to allow to originate from the property, sound that is a public disturbance noise.

B. Definition. "Public disturbance noise" means any noise, sound or signal which unreasonably disturbs the comfort, peace, or repose of another person or persons. The following sounds are declared to be public disturbance noises for the purposes of this section:

1. Frequent, repetitive, or continuous noise made by any animal which unreasonably disturbs or interferes with the peace, comfort, and repose of property owners or possessors, except that such sounds made by animal shelters, or commercial kennels, veterinary hospitals, pet shops, or pet kennels licensed under and in compliance with applicable regulations shall be exempt from this subsection;

2. The frequent, repetitive or continuous sounding of any horn or siren attached to a motor vehicle except as a warning of danger or specifically permitted or required by law;

3. The creation of frequent, repetitive, or continuous noise in connection with the starting, operation, repair, maintenance, rebuilding, or testing of any motor vehicle, motorcycle, off-highway vehicle, or internal combustion engine in any residential or rural area district so as to unreasonably disturb or interfere with the peace, comfort, and repose of owners or possessors of real property;

4. The use of a sound amplifier or other device capable of producing or reproducing amplified sounds from the property of a business operation

which is intended to either attract the attention of the potential customers to the business or to communicate with employees who are at extended portions of the business property, audible to the human ear beyond any perimeter of the subject business property;

5. The making of any loud and raucous noise within one hundred feet from any school, church, hospital, sanitarium or nursing or convalescent facility which unreasonably interferes with the use of such school, church, hospital, sanitarium or nursing or convalescent facility;

6. The creation by use of a musical instrument, whistle, sound amplifier, stereo, jukebox, radio, television, or other device capable of reproducing sound and raucous noises which emanate frequently, repetitively, or continuously from any building, structure, or property, such as sounds originating from a band session, tavern operation or commercial sales lot;

7. Sound from motor vehicle audio sound systems, such as tape players, radios and compact disc players, operated at a volume so as to be audible greater than seventy-five feet from the vehicle itself or which causes vibrations to be felt from a distance of greater than seventy-five feet;

8. Sound from audio equipment, such as loud speakers, amplification equipment, tape players, radios and compact disc players, operated at a volume so as to be audible greater than fifty feet from the source and not operated upon the property of the operator or with the knowledge, permission or consent of the owner or legal occupant of the property, and if operated on the property of the operator or with the knowledge, permission or consent of the owner or legal occupant of the property, than so as to be audible greater than fifty feet from the boundary of the property. For the purposes hereof, any sound, music or other noise emanating from fixed or portable audio equipment of or in a business shall be presumed to be with the knowledge, permission or consent of the owner or legal occupant of the property, which presumption may be rebutted by reasonable evidence to the contrary;

9. Any other frequent, repetitive, or continuous noise, sound or signal within a residential or rural area district which unreasonably disturbs or interferes

with the comfort, peace and repose of owners or possessors of real property.

C. Exemptions. This section shall not apply to regularly scheduled events at parks, schools or other public property between the hours of eight a.m. and ten-thirty p.m. nor shall it apply to sounds originating from residential property relating to temporary projects for the maintenance or repair of homes, grounds, appurtenances, including but not limited to sounds of lawn mowers, hand power tools, chain saws, snow removal equipment and composters between the hours of seven a.m. and nine p.m. Sounds originating from construction sites, including but not limited to sounds from construction equipment, power tools and hammering between seven a.m. and eight p.m. on weekdays, between eight a.m. and six p.m. on Saturdays, and between nine a.m. and six p.m. on Sundays shall also be exempt. This section shall not apply to any public construction projects, emergency construction or repair by public utility agencies, emergency vehicle operation or actions by emergency service providers or any other emergency repair and construction to prevent further damage to persons or property during floods or windstorms or other property or life-threatening emergencies which may occur.

D. Violation—Penalty. Violation of the provisions of this section shall be a misdemeanor and penalized as set forth in Section 1.12.010. (Ord. 826 § 1, 2007)

Chapter 8.16

NUISANCES

Sections:

- 8.16.010** Public nuisances declared and prohibited.
- 8.16.015** Abatement hearing.
- 8.16.020** Abatement by city—Resolution to council.
- 8.16.030** Abatement by city—Notice to owner.
- 8.16.035** Recording of notice and order of abatement.
- 8.16.040** Abatement by city—Cost to owner.
- 8.16.050** Violation—Penalty.

8.16.010 Public nuisances declared and prohibited.

It is unlawful for any responsible person to create, permit, maintain, suffer, carry on or allow upon any premises any of the following acts or things which are declared by this chapter to be a public nuisance:

A. Accumulations of garbage, waste, refuse, litter, debris, ashes, rags, boxes, crates, packing cases, mattresses, scrap iron, tin, pipe, tin cans, bottles, glass cans, small pieces of scrap iron, wire, broken crockery, broken glass, and broken plaster, unless the disposal of such items in such place is specifically authorized by law; retention in lidded containers is permitted;

B. Any open pit, basin, cistern, quarry, well, storage tank, hole or other excavation which is unguarded and without safeguards or barriers and is dangerous to life, or has been abandoned or is no longer used for the purpose for which it was constructed or maintained;

C. Any unsound, putrid or unwholesome bone, meat, hide, skin or the whole or parts of any dead animal, fish or fowl, butcher's trimmings and offal or any waste, vegetable or animal matter in any quantity, or human excreta, provided nothing contained in this chapter shall prevent the temporary retention of

waste in receptacles in the manner approved by the local disposal company;

D. Privies, vaults, cesspools, sumps or like places which are not securely protected from flies and rats or which are malodorous or foul;

E. Noxious, offensive, dangerous or otherwise injurious chemicals or other materials, such as oil, grease, poisons, flammable liquids, explosives, radioactive materials and other similar substances stored in any manner or in any amount other than as provided by Washington state statute or municipal fire code;

F. Any dead, diseased, decayed, infected, hazardous or dying tree or vegetation/clippings (except a compost pile so covered or concealed so as to not affect the health, safety or value of adjacent property) that may constitute a danger to property or persons and all shrubs, bushes, trees or vegetation which have grown or are in such a condition, whether as a result of flammability or state of decay or disease, to constitute a fire hazard or public safety hazard;

G. Broken or discarded furniture, furnishings, appliances, household equipment and other similar items in any front yard, side yard, rear yard or vacant lot;

H. All limbs of trees which are less than nine feet above the surface of any public sidewalk or fourteen feet above the surface of any street;

I. Any vines, plants growing into, on or over any street, sidewalk, public hydrant, pole or electrolier, standpipe, sprinkler system connection or any other facility provided for fire protection purposes, in such a way as to obstruct the view thereof or impair the access thereto, or obstruct or interfere with the proper diffusion of light from any street lamp, or obstruct the vision of any vehicle or pedestrian traffic;

J. Any fence or other structure or thing on private property abutting or fronting upon any public street, alley, sidewalk or place which is in a sagging, leaning, fallen, decayed or other dilapidated or unsafe condition;

K. Vegetation exceeding fifteen inches in height located in a front, side or rear yard of an improved lot, except plants and flowers within a flower bed and shrubs and trees;

L. All shrubs, bushes, trees or other vegetation which:

1. Climb or grow onto adjoining property where such climbing or growth unreasonably interferes with the adjoining landowner's peaceful use and enjoyment of his or her property, or

2. Harbor rats, skunks or other animals to the detriment of adjoining property, or

3. Constitute a fire hazard to adjoining property;

M. Any refrigerator, icebox, deep freeze locker, over or other automatic closing container which is discarded, abandoned or left in any place accessible to children and which has not had the door or latching mechanism removed to prevent the latching or locking of the doors;

N. Animal manure in any quantity which is not securely protected from flies and the elements or which is kept or handled in violation of any ordinance of the city;

O. Any building or other structure or place for the exercise of any trade, activity, employment or manufacture, which, by occasioning obnoxious, hazardous or toxic exhaust or emissions, offensive smells or otherwise, is offensive or dangerous to the health of individuals or the public;

P. Except as lawfully permitted by the Black Diamond fire chief, the burning or disposal of any refuse, hay, straw, sawdust, grass, grass clippings, papers, wood, boards, boxes, leaves or other rubbish or material in such a manner as to cause or permit ashes, sawdust, soot or cinders to be cast upon the streets and alleys of the city, or to cause or permit dense smoke, noxious fumes, ashes, soot or gases arising from such burning to become annoying or injurious to the health, comfort or repose of the general public;

Q. Unless otherwise permitted by law, any noises or sounds emanating from property upon which there is ongoing construction activity, and which noises or sounds are audible on residential property beyond the property lines of the premises on which the construction activity is conducted, between the hours of eight p.m. and seven a.m. on weekdays and six p.m. and eight a.m. on Saturdays and six

p.m. and nine a.m. on Sundays. For purposes of this

section, construction noise and sounds include but are not limited to that resulting from the operation of tractors, backhoes, dump trucks and other construction equipment, in addition to the operation of hammers, drills, saws and other related tools of the trade;

R. All trees, hedges, billboards, fences or other obstructions which prevent persons from having a clear view of traffic approaching an intersection from cross streets in sufficient time to bring motor vehicle driven at a reasonable speed to a full stop before the intersection is reached;

S. Any use of property abutting on a public street or sidewalk or any use of a public street or sidewalk which causes any obstruction of traffic or the free use of the street or sidewalk; provided that this subsection shall not apply to events, programs or parades authorized by the city;

T. All vacant, unused or unoccupied buildings and structures within the city which are allowed to become or remain open to entrance by unauthorized persons or the general public, because of broken, missing or open doors, windows, or other openings, so that the same may be used by vagrants or other persons in a manner detrimental to the health and welfare of the inhabitants of the city;

U. Any pen, stable or lot in which any hog, cattle or fowl may be confined or kept in such manner as to be foul or offensive;

V. Deposit, keep, leave or permit to be deposited, kept or left on private property any junk vehicle, or part thereof, as defined in RCW 46.55.010(4)(5). Provided, however, this subsection shall not apply to (i) a vehicle or part thereof that is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property or (ii) a vehicle or part thereof that is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler or licensed vehicle dealer and is fenced according to RCW 46.80.130;

W. Obstruct or encroach upon or render unsafe for passage any public highway, private way, street, alley, park, square, driveway, lake or stream in the city;

X. Any nuisance as defined and prohibited in any other provision of this code. (Ord. 642, § 1, 1998; Ord. 589 § 1, 1996)

8.16.015 Abatement hearing.

A. With regards to a junk vehicle or a part thereof the owner may request a hearing within the time limits specified in Section 8.16.020. If a request is timely received, then a notice giving the time, location and date of the hearing on the question of abatement and removal of the vehicle or part thereof as a public nuisance shall be mailed by certified mail, with a five-day return receipt requested, to the owner of the land as shown on the last equalized assessment roll and to the last registered and legal owner of record unless the vehicle is in such condition that identification numbers are not available to determine ownership.

B. The owner of the land on which the vehicle is located may appear in person at the hearing or present a written statement in time for consideration at the hearing and deny responsibility for presence of the vehicle on the land, with his reasons for the denial. If it is determined at the hearing that the vehicle was placed on the land without the consent of the landowner and that he has not subsequently acquiesced in its presence, then the costs of administration or removal of the vehicle cannot be assessed against the property upon which the vehicle is located or otherwise collected from the property owner.

C. After notice has been given of the intent to declare the vehicle or part thereof a nuisance and to dispose of the vehicle and after a hearing, if requested, has been held, the vehicle or part thereof shall be removed at the request of the Black Diamond chief of police, with notice to the Washington State Patrol and the Department of Licensing that the vehicle has been wrecked. (Ord. 642 § 3, 1998)

8.16.020 Abatement by city—Resolution to council.

The city administrator or his or her designee shall enforce the provisions of this chapter. If any property owner and/or the registered owner of a junk vehicle fails or refuses to abate any of the nuisances identi-

fied in Section 8.16.010, the city administrator may require such property owner and registered owner, in addition to the penalties prescribed by Section 8.16.050, to abate the nuisance by removal or destruction, at the property owner's and registered owner's cost and expense, within a time specified of not less than ten days. If the nuisance is not abated by such owner within the specified time then the city administrator may abate the same as provided in Section 8.16.040. (Ord. 642 § 2, 1998: Ord. 555 § 1, 1995: Ord. 429 § 2, 1990)

8.16.030 Abatement by city—Notice to owner.

The property owner shall be given at least ten days notice of the requirement to abate the nuisance. Such notice shall be given by the city administrator or his/her designee by mailing a copy of the notice to the owner as shown upon the records of the county treasurer and at the address shown thereon. If no owner and address is shown on such records, a copy of the notice shall be posted upon the property and shall also be published in one issue of the city's official newspaper. The mailing, posting and publication shall be made at least ten days before the abatement is required to be completed. The notice shall describe the property involved, the nature of the hazardous condition constituting the nuisance, the date by which the nuisance will be abated by the city at the property owner's expense if it is not abated to the city administrator's satisfaction by the required date. (Ord. 555 § 2, 1995: Ord. 429 § 3, 1990)

8.16.035 Recording of notice and order of abatement.

A. Whenever a notice and order is served on a person responsible for any of the nuisances identified in Section 8.16.010, the city administrator or his or her designee may record a copy of the notice and order with the King County records and elections division, or its successor agency.

B. When all violations specified in the recorded notice and order have been corrected or abated, the city administrator or his or her designee shall record a certificate of compliance with the King County re-

ords and elections division, or its successor agency. The certificate shall include a legal description of the property where the violation occurred and shall state that any unpaid penalties or costs of abatement for which liens have been recorded are still outstanding and continue as liens on the property. (Ord. 810 § 1, 2006)

8.16.040 Abatement by city—Cost to owner.

If the property owner fails to abate the nuisance within the time fixed by the city administrator and to his or her satisfaction, the city administrator or his or her designee may cause the same to be abated and shall submit a bill to the property owner for the total cost to the city of such abatement. Such cost shall constitute a lien against the property which may be foreclosed as provided for in RCW Chapter 60.04. Alternatively, the city may elect to obtain a judgment against the property owner in the amount of such cost. In addition, with regards to junk vehicles, the city may elect to obtain a judgment against the vehicle's registered owner. Costs for purposes of this section shall include the legal and administrative costs to the city, in addition to the actual cost of abating the nuisance. (Ord. 642 § 4, 1998: Ord. 555 § 3, 1995: Ord. 429 § 4, 1990)

8.16.050 Violation—Penalty.

The failure or refusal to comply with any of the provisions of Section 8.16.010 shall be misdemeanor and penalized as set forth in Section 1.12.010. (Ord. 429 § 5, 1990)

Chapter 8.20

SOLID WASTE MANAGEMENT

Sections:

- 8.20.010 Adoption of comprehensive solid waste management plan.
8.20.020 King County authority limited.

8.20.010 Adoption of comprehensive solid waste management plan.

The city adopts the comprehensive solid waste management plan with addenda as recommended by the solid waste interlocal forum through Resolution No. 89005. (Ord. 430 § 1, 1990)

8.20.020 King County authority limited.

Pursuant to RCW 70.95.160, the city determines that King County shall not exercise any powers regarding the levels and types of service for any aspect of solid waste handling in the city. King County regulations and ordinances regarding levels and types of service for any aspect of solid waste handling shall not apply within the corporate limits of the city as may be now or hereafter determined by the city. (Ord. 430 § 2, 1990)

Chapter 8.24

BOATING REGULATIONS AND NOISE REGULATIONS ON LAKE SAWYER

Sections:

- 8.24.010 Rules and regulations.
8.24.015 Boater education card.
8.24.020 Water-skiing.
8.24.030 Negligent operation.
8.24.040 Nuisances.
8.24.050 Liability for damages.
8.24.060 Violation—Penalty.

8.24.010 Rules and regulations.

A. This chapter adopts King County Code Number 12.44 as it now exists or hereafter is amended to apply to all watercraft operating on Lake Sawyer. King County Section 12.44 is attached to the ordinance codified in this chapter as Exhibit 1. If any provision of this chapter is found to be in conflict with any provision of the King County Code, Section 12.44, as it exists or hereafter is amended; the provisions of this chapter shall apply.

B. Noise Restrictions. It is unlawful to use or operate any vessel powered by motor power on Lake Sawyer unless the vessel propulsion system is: (1) a water cooled outboard engine of stock manufacture or a stock manufactured inboard engine with an outboard drive unit (inboard-outboards) which vents all exhaust gases through the lower drive unit in conjunction with cooling water and/or vents at a point on the drive unit which is under water at all times; or (2) is a water cooled direct drive inboard engine or other type of engine equipped with a muffler, silencer or other device or mechanism of sufficient size and capacity to effectively muffle and reduce noise similar to that of outboards and inboard/outboards. This includes both propeller and jet propulsion watercraft.

C. Licensing Requirements. All boats as required under the Washington Administrative Code Section 308-93 shall have a valid King County boat registration or county of registration decal and a Washington boat registration number on the boat in a

readily visible location in a contrasting color to the boat color.

D. **Swimming Regulations.** All swimmers, snorkelers and divers more than one hundred feet from the shore must have a watercraft along side during times when watercraft speeds are allowed in excess of eight miles per hour. Boats with divers must have a red and white “dive flag” displayed.

E. **Boating Regulations.**

1. Except as otherwise specifically provided for in this chapter, it is unlawful for any person to operate a motor-powered watercraft on Lake Sawyer in excess of eight miles per hour.

2. **Rules on the Water.**

a. **Speeding Hours.** Vessels may exceed the posted speed limit of five miles per hour between the hours of two p.m. and seven p.m. on Mondays through Fridays and from eleven a.m. to three p.m. on Saturdays, Sundays and holidays.

b. **Maximum Speed During “Speeding Hours.”** The maximum speed allowable during the above designated hours shall be thirty-six miles per hour.

c. **Movement of Vessels.** All watercraft operating in excess of five miles per hour shall proceed in a “counterclockwise” direction.

d. **Designated Areas of Operation During “Speeding Hours.”** Watercraft operating in excess of five miles per hour with or without someone in tow shall not operate between buoys and shorelines and within one hundred feet from other craft or persons.

e. **Operation Inside Buoy Areas.** All motorized vessels shall operate at a no wake speed on shoreline side of buoy areas at all times.

f. **Marine Patrol Actions.** Marine patrol officers shall have the discretion, depending on the volume of watercraft on the lake, to require all boats not staying within the flow of traffic to move their activity to an area between the shoreline and the buoys described in subsection F of this section.

g. **Speed Limit.** The maximum speed for all watercraft on Lake Sawyer is five miles per hour, except during those times designated as “speeding hours” in subsection (E)(2)(a) of this section.

3. “Watercraft” as used in this chapter shall include boats, jetskis, and all forms of personal watercraft.

4. Watercraft shall at all times be operated in a reasonable and prudent manner. No person shall operate a watercraft in an unsafe manner. Unsafe watercraft operation shall include, but not be limited to the following:

a. Becoming airborne or completely leaving the water while crossing the wake of another vessel at an unsafe distance from the vessel creating the wake or becoming airborne in an unsafe manner while in the proximity of other vessels or persons;

b. Weaving through congested traffic;

c. Operating at such speed and proximity to another vessel as to require the operator to take evasive action to avoid a collision;

d. Steering toward an object or person in the water and turning sharply at close range;

e. Executing tight three hundred sixty degree turns commonly referred to as “spinning donuts”;

f. Facing backwards while driving;

g. Following inside the wake within three hundred feet of another watercraft that is towing other individuals;

h. Cutting between a boat and an individual being towed;

i. Chasing, harassing or disrupting wildlife; or

j. **Minimum Age for Personal Watercraft Operation.** All persons operating a personal watercraft type vessel at any time shall be at least sixteen years of age.

A violation of this subsection shall constitute an infraction for which a monetary penalty may be assessed in accordance with the infraction penalty schedule established by the Black Diamond Municipal Code.

5. It is unlawful to move, remove, molest, tamper with, destroy or attempt to destroy or moor or fasten a watercraft to the buoys placed approximately two hundred feet from the shoreline for the purpose of designating the slow speed zone.

6. Federal regulations covering the equipping of boats with personal flotation devices for each passenger and also use of running lights for night opera-

tion, shall be strictly complied with. Each personal floatation device shall be in a serviceable condition, of an appropriate size, readily accessible and available for each person on board.

7. All vessels or watercraft shall keep clear of aircraft landing within any area now or hereafter set aside by law for such purposes. Aircraft on the water shall keep clear of all vessels and watercraft and avoid impeding their navigation.

F. Buoy, Accessories on the Water. Floats, rafts and docks not attached to the shore shall be maintained in a safe and reasonable manner by the owner(s) of such facilities. Such facilities shall be located between the buoy line and the shoreline. In general, buoys shall be placed approximately two hundred feet from the shoreline around the lake. Buoys are to be provided and maintained only by the city of Black Diamond with the assistance of the Lake Sawyer Community Club. (Ord. 787 § 1, 2005; Ord. 786 §§ 1—3, 2005; Ord. 763 § 1, 2004; Ord. 689 §§ 1, 2, 2000; Ord. 664 § 1, 1999; Ord. 636 § 1, 1998)

8.24.015 Boater education card.

A. No person shall operate or permit the operation of motor-driven boats and vessels with a mechanical power of fifteen horsepower or greater unless the person:

1. Is at least twelve years of age, or sixteen if a personal watercraft; and

2. Has in his or her possession a Washington State boater education card, unless exempted under subsection B of this section; or is accompanied by and is under the direct supervision of a person sixteen years of age or older who is in possession of a boater education card, or who is not yet required to possess the card as provided in the program phase in subsection (A)(3) of this section.

3. The requirement to have a Washington State boater education card shall apply to person of the particular age on or after the dates listed on the following schedule. The schedule for phase-in of the mandatory Washington State boater education card requirement by age group is as follows:

January 1, 2008	All boat operators twenty years old and younger
January 1, 2009	All boat operators twenty-five years old and younger
January 1, 2010	All boat operators thirty years old and younger
January 1, 2011	All boat operators thirty-five years old and younger
January 1, 2012	All boat operators forty years old and younger
January 1, 2013	All boat operators fifty years old and younger
January 1, 2014	All boat operators sixty years old and younger
January 1, 2015	All boat operators seventy years old and younger
January 1, 2016	All boat operators

B. The following persons are not required to carry a boater education card:

1. The operator of a vessel engaged in a lawful commercial fishery operation as licensed by the department of fish and wildlife under Title 77 RCW. However, the person when operating a vessel for recreational purposes must carry either a valid commercial fishing license issued by the department of fish and wildlife or a boater education card;

2. Any person who possesses a valid marine operator license issued by the United States coast guard when operating a vessel authorized by such coast guard license. However, the person when operating a vessel for recreational purposes must carry either a valid marine operator license issued by the United States coast guard or a boater education card;

3. Any person who is legally engaged in the operation of a vessel that is exempt from vessel registration requirements under Chapter 88.02 RCW and applicable rules and is used for purposes of law enforcement or official government work. However, the person when operating a vessel for recreational purposes must carry a boater education card;

4. Any person at least twelve years old renting, chartering, or leasing a motor-driven boat or vessel with an engine power of fifteen horsepower or

Chapter 8.26

BICYCLE HELMETS

Sections:

- 8.26.010 Purpose and policy declared.**
- 8.26.020 Definitions.**
- 8.26.030 Bicycle helmet required.**
- 8.26.040 Minors—Guardian’s responsibility.**
- 8.26.050 Infraction—Dismissal following helmet purchase.**
- 8.26.060 Prohibition.**
- 8.26.070 Violation—Penalty.**

8.26.010 Purpose and policy declared.

It is the specific intent of this chapter to place the obligation of complying with its terms upon any person falling within its scope. No provision of this chapter is intended to impose any duty upon the city of Black Diamond or any of its officers, employees, or agents for any damage or injury resulting from the failure of a person to comply with this chapter. Implementation and enforcement of this chapter by the city of Black Diamond and its officers or employees shall be discretionary and not mandatory. This chapter is not intended to form the basis for liability of the city of Black Diamond, or any of its officers, employees, or agents, in the event that a person is injured or property is damaged as a result of the failure of any person to comply with its terms. (Ord. 785 § 2, 2005)

8.26.020 Definitions.

For the purposes of this chapter, the following terms shall have the following meanings:

“Approved bicycle helmet” means a head covering designed to protect the head that meets or exceeds the requirements of standard Z-90.4 set by the American National Standard Institute (ANSI) or the Snell Foundation, or a subsequent nationally recognized standard for helmet performance as the city may adopt.

“Bicycle” means every device propelled solely by human power upon which a person or persons may

ride, having two tandem wheels, either of which is eight inches or more in diameter, or three wheels, any one of which is more than twenty inches in diameter. The term “bicycle” shall include any child-seat, trailer, sidecar, or other device attached to a bicycle.

“Child” means a person under the age of eighteen.

“Guardian” means a person legally responsible for the care and management of a person under the age of eighteen. “Guardian” shall include the parent, a person with legal custody, a person with temporary custody, or a person who is temporarily caring for the child.

“Public area” means the public roadways, sidewalks, bicycle paths, parks, public property, public rights-of-way, and publicly owned facilities within the city limits of the city of Black Diamond. (Ord. 785 § 3, 2005)

8.26.030 Bicycle helmet required.

A. Any person under the age of eighteen riding a bicycle, including a passenger on a bicycle or a person in tow of a bicycle, upon any public area, shall wear an approved bicycle helmet, which shall be worn over the head and equipped with either a neck or chin strap that shall be fastened securely while the bicycle is in motion.

B. The guardian of a child is responsible for requiring that the child under his or her care wears an approved bicycle helmet while bicycling, or riding as a passenger on a bicycle or in tow of a bicycle, in any public area, and that the child has the neck or chin strap of the helmet fastened securely. Each child not wearing a secured strap shall be considered a separate offense chargeable to the parent or guardian. (Ord. 785 § 4, 2005)

8.26.040 Minors—Guardian’s responsibility.

The guardian of a person under the age of sixteen years shall not knowingly allow, or fail to take reasonable steps, to prevent that person from operating or riding on a bicycle or other cycle not powered by a motor on a public highway, bicycle path or any right-of-way or publicly owned facilities under the jurisdiction of the city of Black Diamond, unless that person

is wearing an approved bicycle helmet fastened securely. (Ord. 785 § 5, 2005)

8.26.050 Infraction—Dismissal following helmet purchase.

The first time a person has been issued a notice of infraction for violation of this chapter, if such person appears in person before the court and supplies the court with proof that between the date of notice of infraction and the appearance date in court the person has purchased a helmet that meets the requirements of this chapter, the court shall dismiss the notice of infraction without cost. (Ord. 785 § 6, 2005)

8.26.060 Prohibition.

No person shall ride a bicycle or human propelled scooter upon the bicycle track, unless that person is properly wearing an approved helmet that is fastened securely. (Ord. 785 § 7, 2005)

8.26.070 Violation—Penalty.

Any person violating the provisions of this section of the BDMC (Black Diamond municipal court) shall be guilty of a civil infraction, and conviction thereof, shall be punished by imposition of a monetary penalty of not more than seventy-five dollars. Community service hours may be imposed in addition to or in lieu of monetary penalties. (Ord. 785 § 8, 2005)

Chapter 8.28

SKATE PARK REGULATIONS

Sections:

- 8.28.010 Purpose and policy declaration.**
- 8.28.020 Definitions.**
- 8.28.030 Hours of use.**
- 8.28.040 Spectators, bicycles and motorized vehicles prohibited in skate park.**
- 8.28.050 Helmets required.**
- 8.28.060 Tobacco prohibited in skate park.**
- 8.28.070 Disposal of garbage.**
- 8.28.080 Disturbance of peace.**
- 8.28.090 Violation—Penalty.**

8.28.010 Purpose and policy declaration.

It is the intent of this chapter to place the obligation for compliance with its requirements upon any person falling within its scope, and nothing in this chapter is intended to impose any duty upon the city of Black Diamond, or its officers or employees, for whom the implementation or enforcement of this chapter shall be discretionary and not mandatory. Nothing contained in this chapter shall be construed to create or to form the basis for liability on the part of the city of Black Diamond, or its officers, employees, or agents, for any injury or damage resulting from the failure of any person subject to this chapter to comply with this chapter, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of this chapter on the part of the city of Black Diamond by its officers, employees, or agents. (Ord. 831 § 1 (part), 2007)

8.28.020 Definitions.

“Approved helmet” means a head covering designed for safety that meets or exceeds bicycle helmet safety standards adopted by Standard Z-90.4 set by the American National Standards Institute (ANSI), or the Snell Foundation which are adopted by reference as if fully set forth herein.

“In-line skates,” “motorized foot scooters,” “roller skates,” and “skateboards” shall have the meanings set forth in BDMC 10.32.010 as amended.

“Skate park” means the city of Black Diamond skate park facility located on the fifty-two foot by one hundred foot concrete slab at the intersection of 3rd Avenue and Park Street with a physical address of 25241 Park Street, Black Diamond, Washington. (Ord. 831 § 1 (part), 2007)

8.28.030 Hours of use.

The skate park shall be open daily from nine a.m. to dusk. Unless authorized by the city council, no person shall go upon or remain in the skate park outside of the posted hours. (Ord. 831 § 1 (part), 2007)

8.28.040 Spectators, bicycles and motorized vehicles prohibited in skate park.

The skate park is designed for use by skateboards, in-line skates, roller skates, and nonmotorized foot scooters only. No spectators, bicycles, cross-skates, motorized foot scooters or other vehicles are allowed on the skate park. (Ord. 831 § 1 (part), 2007)

8.28.050 Helmets required.

A. Any person using the skate park shall wear an approved helmet and shall have either the neck or chin strap of the helmet fastened securely while the skateboard, in-line skates, roller skates, or nonmotorized foot scooter is in motion.

B. No person shall transport another person on or in tow of a skateboard, in-line skates, roller skates, or nonmotorized foot scooter in the skate park unless the passenger is wearing a helmet that meets the requirements of this chapter.

C. A parent or guardian is responsible for requiring that a child under the age of eighteen years wears an approved helmet while skateboarding, in-line skating, roller skating, riding a nonmotorized foot scooters or riding as a passenger on such device in the skate park, and has the neck or chin strap of the helmet fastened securely. (Ord. 831 § 1 (part), 2007)

8.28.060 Tobacco prohibited in skate park.

No person shall possess or consume tobacco products in the skate park. (Ord. 831 § 1 (part), 2007)

8.28.070 Disposal of garbage.

No person shall dump or dispose of any litter or garbage in the skate park except in receptacles which are provided therefore. No glass, food or beverages are allowed on the skate park. (Ord. 831 § 1 (part), 2007)

8.28.080 Disturbance of peace.

A. No person shall engage in loud, boisterous, threatening, abusive, insulting or indecent language, or engage in any disorderly conduct or behavior tending to a breach of the public peace in the skate park.

B. No person shall cause, make or allow to be made from audio or similar equipment under such person’s control loud music or loud noise in the skate park, so as to be audible greater than one hundred feet from the source. (Ord. 831 § 1 (part), 2007)

8.28.090 Violation—Penalty.

Any person violating any provision of this chapter shall be guilty of a civil infraction, and conviction thereof shall be punished by imposition of a monetary penalty of not more than seventy-five dollars, exclusive of statutory assessments. Community service hours may be imposed in addition to or in lieu of monetary penalties. In addition, the device ridden or operated at the time of the violation shall be subject to impoundment for a period of five days. The impound fee set forth in the city’s fee resolution shall be paid prior to the release of the device ridden or operated. (Ord. 831 § 1 (part), 2007)