



# AGENDA

**Planning & Community Service Committee Meeting**  
**Public Works Conference Room**  
**24301 Roberts Drive, Black Diamond, WA**

**Date: Tuesday, January 13, 2015**

**Time: 4:00 – 5:00 p.m.**

**Attendees:** Councilors Edelman & Morgan, Mayor Benson & City staff

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- 1. Review of Interlocal Agreement with Covington/Maple Valley for Building Services –Action Requested-**

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  - 2. Discussion of Planning Commission’s Recommendations on Both Medical and Recreational Marijuana Land Uses within the City of Black Diamond –Potential Action-**

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  - 3. Master Planned Development Zone Moratorium Discussion, Options –No Action-**

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  - 4. Adjournment**

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

**RECITALS**

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

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

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

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

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

**AGREEMENT**

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

2.1. Offered Services.

- 2.1.1. **Building Code Administration.** Covington agrees to offer building code administration services, performed by Covington’s Building Official, to the standards adopted of the Requesting Parties.
- 2.1.2. **Plans Examination.** Covington agrees to offer plans examination services, performed by Covington’s Plans Examiner, to the adopted standards of the Requesting Parties.
- 2.1.3. **Building Inspection.** Maple Valley agrees to offer building inspection services, performed by Maple Valley’s Building Inspectors, to the adopted standards of the Requesting Parties.

**(Carol Morris) - There is nothing in this Agreement which describes the training and experience of the persons at Covington and Maple Valley who would be performing the services.**

**To be added: “Maple Valley and Covington represent and warrant that its building official, plans examiners and building inspectors have the requisite training, skill, and experience necessary to provide the services under this Agreement, and that they are appropriately accredited and licensed by all applicable agencies and governmental entities. Services performed by Maple Valley and Covington building official, plans examiners and building inspectors under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.”**

**(Aaron Nix) - I don’t have an issue with this language. I’m checking with the Cities of Covington and Maple Valley.**

**(Robert Meyers) - I don’t think the proposed added language is needed. Each City already sets their standard for the skillset, experience, and education. Many small cities have not made this a priority for various reasons. There is no minimum standard for building Department staff locally, statewide, or at the national level. There have been bills proposed at the state level to require a minimum level of experience and certification for building department staff. I think this will likely become a law in the future. In short I could easily be argued that an uncertified, inexperienced person complies with the proposed language and this is a reality in some cities.**

**(Aaron Nix) - In reviewing Covington and Maple Valley’s processes for hiring building staff and the Building Officials back ground checks, it appears that the individuals slated to work on Black Diamond projects are more than adequately qualified. Please see Robert’s comments above. Would it be helpful to provide their resumes or other information showing their work/education credentials? As the insurance question has been answered**

with regard to coverage of these individuals working for the City, this appears to also be a moot point, as the City's insurance carrier will be defending any lawsuits associated their work. The Community Development Director will monitor this situation as issues come up, if they do.

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

In Black Diamond's case, we have utilized our permitting software in order to track, assign and document plan review, inspections and code enforcement duties with our contracted agency. Some training is expected with the transition of utilizing Maple Valley inspectors, but Covington utilizes the same system as Black Diamond and has already begun training these new Inspectors within this system.

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

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

There is nothing here to describe the process, only that one city calls another, request the service and it is "promptly" provided. What is "promptly?" Given that there could be complaints and/or lawsuits against the City relating to delays in permit processing/inspection, how will Black Diamond be able to enforce this Agreement if BD requests service and it is not provided?

I will ask for a response from Maple Valley/Covington.

We have had to vary what promptly means based on the specific need, current work load, and staff availability. We have always had discuss the service level based on the individual project. This seems be working well for all and seems to provide an acceptable level of service.

This has helped the City of Black Diamond provide more flexible service with regard to flexible plan review and inspection scheduling, special requests and unforeseen circumstances. This flexibility is needed in order to meet demand and save the City financial resources. If this is an issue, can there be a mechanism utilized internally so that a limit can be applied on resources spent. Based on last year's significant increase in service need, we need to carefully monitor this, as staff has always done in the past with regard to these services. Historically, we have not had any issue with regard to delays in permitting, inspections, as this is tracked and monitored by our Permit Technician and the Director. If there are any instances when this could occur, these issues will be identified well ahead of time, documented and reported to the Mayor/City Council/Counsel for affirmative action as outlined within this agreement.

~~Who is going to do code enforcement? Is this included in the "building code administration" services in Section 2.1.1? Will the persons performing services provide testimony in appeal hearings/lawsuits?~~ Community Development Director has been assigned this responsibility as this service can be performed. Budget for code enforcement has been eliminated in previous Council passed budgets. He or She will utilize Building staff if needed on Building related code enforcement issues and other Departments, as it relates to their respective areas of expertise. The system is not terrific, but it deals with emergency situations as they develop. A pro-active code enforcement program is not attainable with available resources.

There needs to be some acknowledgement that the persons providing the services will be enforcing the requesting city's code. I know that all cities use the State Building Code but each city may have adopted amendments. Also, each city likely has a different code for enforcement (issuing stop work orders and notices of violation).

I concur and am checking with Maple Valley/Covington.

Each city already has to comply with the state adopted building code. The powers and duties of the building official are defined in the International Building Code (IBC) section 104. The appointment of the city building official is described in Black Diamond Municipal Code (BDMC) section 15.04.110 and the administration and enforcement of the city's building code is covering in BDMC section 15.04.120. So by using the term building official the agreement already covers this issue.

I Concur. See code shown below.

#### **15.04.100 Building division established.**

There is established for the city, the building division that shall be under the supervision and control of the city administrator or his/her designee.

*(Ord. No. 943, § 2, 6-17-2010)*

#### **15.04.110 Building official designated.**

The building official, as defined in Section 104 of the International Building Code, R104 of the International Residential Code, and Section 104 of the International Mechanical Code, shall be appointed by the city administrator, and in the absence of such appointment, shall be the city administrator.

*(Ord. No. 943, § 2, 6-17-2010)*

#### **15.04.120 Administration and enforcement.**

The building official is hereby authorized and directed to enforce the provisions of the technical codes, with the exception of the fire code. The building official, with the exception of the fire code, shall have the authority to render interpretations of the technical codes and to adopt policies and procedures in order to clarify the application of their provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of this chapter. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in the technical codes. Except as otherwise provided in this chapter, the provisions of this chapter shall be administered and enforced by the building official of the city.

*(Ord. No. 943, § 2, 6-17-2010)*

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

~~This paragraph should be clarified to state that the Agreement will be effective if signed by Covington and Maple Valley. If Maple Valley and Black Diamond sign, but not Covington, then Covington won't be able to provide services described in section 2 to Maple Valley or Black Diamond.~~

Moot points as both Maple Valley and Covington have signed the agreement.

N/A

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

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

- 4.1. Payments for Offered Services.** A Requesting Party shall pay for actual direct and related indirect costs, including any overhead and administrative charges, for Offered Services provided by the relevant Providing Party pursuant to the fees listed for each Providing Party in Exhibit A, attached hereto and incorporated herein by this reference. Any indirect costs may be waived by a Providing Party at its sole discretion.

Exhibit A needs to be amended to show all of the charges that will be imposed, including “actual direct and related indirect costs.”

Please see my comments within that section for additional detail needs.

Please see my comments within that section.

- 4.2. Billing.** Each Providing Party shall submit a monthly invoice to each Requesting Party, which shall contain the amount of Offered Services provided during the preceding month. Payment shall be made by the Requesting Party within thirty (30) days of receipt of said invoice from a Providing Party.
- 4.3. Disputes.** In the event there is a dispute regarding an invoiced amount by a Providing Party, the Parties in dispute shall make every effort to resolve such dispute by mutual agreement. In the event there is no mutually agreed resolution to the dispute, the relevant Parties shall forward the dispute to each Party’s City Manager/City Administrator/Mayor for resolution. In the event there is no resolution after review by the Parties’ City Manager/City Administrator/Mayor, the Parties shall seek mediation through a mutually agreed mediation service and each Party shall bear its own costs for mediation. If mediation is unsuccessful, any Party may pursue any legal remedy available from a court of competent jurisdiction. Any dispute that has gone to mediation and mediation was unsuccessful in resolving the dispute shall be grounds for any Party to terminate this Agreement for material breach.

## **5. Termination.**

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

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

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

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

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

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

**What happens if a property owner in Black Diamond sues Black Diamond, Covington and the Covington Building Official individual, based on the actions of the Covington Building Official?**

I will ask Maple Valley/Covington on their thoughts on this issue.

I think the important issue is that if the agreement is approved Covington’s Building Official becomes Black Diamonds Building Official. I also think BDMC section 15.04.150 covers the process in detail and is the same process for a permanent hire position.

Please see added language within section 2.1 Offered Services.

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

Have you run this Agreement by the City's insurance provider to see whether they would provide coverage to Black Diamond for the actions of employees/consultants of Covington and/or Maple Valley under this Agreement? I don't think you should just assume that there will be coverage.

In process and will be completed shortly. Also, see attached email exchange with the City's Insurance provider.

N/A

## 8. Independent Service Provider.

- 8.1. The Parties intend that an independent contractor relationship is created by this Agreement. In providing Offered Services under this Agreement, each Providing Party is an independent contractor and neither it nor its officers, agents, or employees are employees of a Requesting Party for any purpose, including responsibility for any federal or state tax, industrial insurance, or Social Security liability. Neither shall the provision of Offered Services under this Agreement give rise to any claim of career service or civil service rights, which may accrue to an employee of the Providing Party under any applicable law, rule, or regulation. Nothing in this Agreement is intended to create an interest in or give a benefit to third persons not signing as a party to this Agreement. As an independent contractor, each Providing Party shall be responsible for the reporting and payment of all applicable local, state, and federal taxes.
- 8.2. To the extent that any Requesting Party exercises control and direction over the work of any Providing Party, such control and directions will be for purposes of achieving the results specified in the request for Offered Services. No agent, employee, or representative of a Providing Party shall be deemed to be an employee, agent, or representative of a Requesting Party for any purpose, and the employees of a Providing Party are not entitled to any of the benefits that a Requesting Party provides for its employees. Each Providing Party shall be solely and entirely responsible for its acts and for the acts of its agents, employees, or representatives performed within the authorized scope of its agents, employees, or representatives' duties during the performance of this Agreement.
- 8.3. In the performance of the Offered Services herein each Providing Party is an independent contractor with the authority to control and direct the performance of the details of the Offered Service; however, the results of the Offered Services herein must meet the approval of the Requesting Party and shall be subject to the Requesting Party's general rights of inspection and review to secure the satisfactory completion thereof.

## 9. Miscellaneous.

- 9.1. **Notices.** Notwithstanding Sub-sections 2.2 and 2.3 herein, notices to be provided pursuant to this Agreement shall be provided in writing to the person and address indicated below. Notices shall be deemed delivered three (3) days after placement of

the notice in the U.S. Mail, first class postage pre-paid. Courtesy copies of notices may be provided via email transmission but shall not constitute delivery of written notice as set forth herein.

**9.1.1.** City of Covington  
Community Development Director  
16720 SE 271<sup>st</sup> St. Suite 100  
Covington, WA 98042

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

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

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

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

**9.4. Assignment.** This Agreement is not assignable by any Party, in whole or in part.

**9.5. Modification.** No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless made in writing and approved by the legislative body of each city.

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

**9.6.1. Nondiscrimination in Employment.** In the performance of this Agreement, no Party will discriminate against any employee on the grounds of race, religion, creed, color, national origin, sex, marital status, disability, sexual orientation, age, or other basis prohibited by state or federal law unless based upon a

bona fide occupational qualification. Each Party shall take such action with respect to this Agreement as may be required to ensure full compliance with local, state, and federal laws prohibiting discrimination in employment.

- 9.6.2. Nondiscrimination in Services.** No Party will discriminate against any recipient of any Services provided for in this Agreement on the grounds of race, religion, creed, color, national origin, sex, marital status, disability, sexual orientation, age, or other basis prohibited by state or federal law.
- 9.7. Entire Agreement.** The written terms and provisions of this Agreement, together with any exhibits attached hereto, shall supersede all prior communications, negotiations, representations or agreements, either verbal or written, of any officer, employee, or other representative of each party and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Agreement. All of the exhibits are hereby made part of this Agreement. Should any of the language of any exhibits to this Agreement conflict with any language contained in this Agreement, the language of this document shall prevail.
- 9.8. Severability.** If any provision of this Agreement, in whole or in part, is adjudicated to be invalid, such action shall not affect the validity of any provision not so adjudicated.
- 9.9. Interpretation.** The legal presumption that an ambiguous term of this Agreement should be interpreted against the Party who prepared the Agreement shall not apply.
- 9.10. No Third Party Beneficiaries.** This Agreement is between the Parties and is not meant to benefit any third party.
- 9.11. Counterparts.** This Agreement may be executed in multiple counterparts, any of which shall constitute an agreement by and among the Parties who have executed this Agreement, provided that each Party shall transmit to the attention of the Covington City Clerk an original, executed signature page of this Agreement. The Covington City Clerk shall cause a copy of this Agreement and a copy of each executed signature page of each party to be posted on the Covington City website pursuant to RCW 39.34.040.

\*\*\*Signatures appear on next page\*\*\*



**EXHIBIT A  
PROVIDING PARTIES' SERVICE FEES—2015**

**1. Covington Service Fees**

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

**What does this fee cover? Does it cover travel? How is travel time billed – if the Covington Building Official is billing, as an example, does he bill his hourly fee from the time he leaves Covington City Hall until he arrives at the subject Black Diamond property? (Because the Building Official would issue a stop work order after visiting a site?) Or is the only person who will bill for travel the building inspector? What are the “direct costs?” What are the “indirect costs” that could be billed under this Agreement? Is “administrative and overhead” costs included in these hourly rates?**

In the past this has been a flat fee that covers the time in which the person(s) are here. That has equated to 3 hours a day, typically. In most cases, it does not appear that travel time has been assessed. Is that true Robert?

**We are currently charging travel time.**

**This is a per hour agreement so the time that it takes to provide the service is billed including travel time. I am not sure about the purpose of the language in section 4.1 above except I believe that it allows some flexibility but the only cost will be the hourly cost.**

In the past, this has been as the discretion and responsibility of the Community Development Director, as City Code gives this position this responsibility. As shown within those past budget line items, these services have been covered within the time period in which the BO, Building Inspector or Plans examiner has been onsite, with careful oversight and planning by the Permitting Technician and Community Development Director or taken care of by these other Staff members. We expect these efficiencies to continue as these two positions continue to exist within the City at this time.

**2. Maple Valley Service Fees**

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

Based on this language, it appears that the City will be assessed travel time from the location of the Inspector in Maple Valley. Robert, is that correct?

**Yes.**

Again, this will be monitored weekly by the Community Development Director, Permitting Technician and reported to the Mayor. The permitting software will also allow any elected official to monitor this as well.

## Aaron Nix

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**From:** Kris Lawrence <kal@propelinsurance.com>  
**Sent:** Tuesday, January 06, 2015 12:03 PM  
**To:** Aaron Nix  
**Cc:** Brenda Martinez; Kellie Hogan  
**Subject:** FW: Final Revised ILA for Building Services  
**Attachments:** Attachment 1 ILA\_COV\_MV\_BD\_Bldg Services\_2Dec2014\_v2\_Morris\_Comments.doc

Hi Aaron,

Thanks for sending this over and discussing with me today. Here are my observations/recommendations:

1. Question raised by attorney regarding coverage: The city's insurance has a duty to defend and indemnify a suit that is brought by a third party arising out of the work done by a service provider (Covington / Maple Valley). However there is no duty to defend or indemnify the service provider.
2. Typically we would see the service providers (Covington and Maple Valley) indemnify and hold harmless Black Diamond as they are a service provider and crating the exposure; the current indemnification seems a little too "mutual".
3. Insurance Provision. I would suggest replacing this entire paragraph with the following. Some day cities may opt not to be with a pool and you don't want to amend every contract that references a pool.

*Insurance. Covington, Maple Valley and Black Diamond will maintain at their own expense the following insurance coverage for the duration of this agreement and up to 3 years after such agreement has terminated. Such coverage shall be written with a carrier licensed to do business in the State of Washington.*

*Commercial General Liability Insurance with a per occurrence limit of not less than \$5,000,000 with an annual aggregate of not less than \$5,000,000. Commercial Auto Liability of not less than \$5,000,000 combined single limit, including hired and non owned auto liability.*

*Covington and Maple Valley as the service providers shall also carry Professional Liability and/or Errors and Omissions Coverage of not less than \$1,000,000 for each claim.*

*Covington and Maple Valley shall name the City of Black Diamond, its officers, agents and representatives as an Additional Insured under the Commercial General Liability policy. The policies for Covington and Maple Valley shall be primary.*

*A Certificate of Insurance shall be provided by Covington and Maple Valley to Black Diamond on or before commencement of this agreement.*

As discussed, it is typical for the service provider to name the service receiver as an additional insured which allows the service providers policy to defend the City of Black Diamond in a suit that is brought due to the negligence of the service provider. Basically any outside provider should be held to this standard regardless of their relationship with the city.

I hope this helps, call with any questions or have your attorney contact me.

Sincerely,

**Brenda L. Martinez**  
City of Black Diamond

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**From:** Aaron Nix  
**Sent:** Tuesday, December 23, 2014 11:18 AM  
**To:** Brenda Martinez  
**Subject:** FW: Final Revised ILA for Building Services

Hi Brenda,

I'm not sure if we have done this in the past, but since we're utilizing other Officials from other Cities for the services of Building Official/Plan Reviewer/Inspector, Carol Morris has suggested that this be run past our City's Insurer to see if they have any heartburn with the agreement. You'll see the comment on page 5 of 10, section 7.

Do you want me to send it or do you want to deal directly with our insurer. If me, who is our contact again?

Thanks,

**Aaron C. Nix, MPA**  
City of Black Diamond  
Community Development and Natural Resources Director  
360.886.5700 Office  
[anix@ci.blackdiamond.wa.us](mailto:anix@ci.blackdiamond.wa.us)

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**From:** Carol Morris [[mailto:carol\\_a\\_morris@msn.com](mailto:carol_a_morris@msn.com)]  
**Sent:** Tuesday, December 23, 2014 10:45 AM  
**To:** Aaron Nix  
**Subject:** FW: Final Revised ILA for Building Services

Here you go.

**Carol Morris, Morris Law, P.C.**  
3304 Rosedale Street N.W., Suite 200  
Gig Harbor, WA 98335  
(253) 851-5090  
F: (360) 850-1099  
[carol@carolmorrislaw.com](mailto:carol@carolmorrislaw.com)

From: [ANix@ci.blackdiamond.wa.us](mailto:ANix@ci.blackdiamond.wa.us)

To: [carol a morris@msn.com](mailto:carol_a_morris@msn.com)

CC: [CBenson@ci.blackdiamond.wa.us](mailto:CBenson@ci.blackdiamond.wa.us); [jedelman@ci.blackdiamond.wa.us](mailto:jedelman@ci.blackdiamond.wa.us); [EMorgan@ci.blackdiamond.wa.us](mailto:EMorgan@ci.blackdiamond.wa.us); [MMiller@ci.blackdiamond.wa.us](mailto:MMiller@ci.blackdiamond.wa.us)

Subject: FW: Final Revised ILA for Building Services

Date: Wed, 3 Dec 2014 20:02:57 +0000

Good Morning Carol,

Based on my discussion yesterday with the Planning and Community Services Committee, I was given the OK to move forward with the work that I've been doing in re-negotiating a new ILA (currently with the City of Covington only and set to expire in March of this year (Resolution 13-859)) for Building Official, plan review, inspection services and adding back in some Code Enforcement expertise (relating to building issues only) into a new ILA.

During this process, the three Directors from Covington, Maple Valley and Black Diamond met and came to consensus that we could share services amongst all three Cities with Covington supplying Building Official duties (with Code Enforcement for Building issues), plan review and inspection services for all three cities. Maple Valley has building inspectors that they fund and could share with us and Covington. This will allow for better efficiency as it pertains to services provided by Maple Valley and Covington for all of us, with the least most expense to us. I've looked as utilizing independent contractors for this (as we've done in the past) and they cannot meet the hourly rate that this ILA or previous ILA's charge. Plus, we are not charged for travel time, where as an independent contractor would, as confirmed by myself and Robert Meyers.

For May's benefit, I asked our Building Official to give us and update of our current costs thus far for these services under our current ILA and projections for the rest of the year based on our current ILA (Attached). The new annual amounts can be calculated by putting in the new rate if she'd like to. In talking with Robert, he is comfortable in being able to meet these additional obligations and managing these Staff, as the other duties (i.e. Plan Review and Inspection Services) will now lie with his new Staff and limited involvement on his part.

I received the Draft ILA (Attached) just now from the City of Covington. It has been reviewed by Maple Valley's and Covington's City Attorneys and I am asking you to give it your review. Please let me know your thoughts. If other's have comments as well, please let me know and we'll work through these issues.

Thank You,

**Aaron C. Nix, MPA**

City of Black Diamond

Community Development and Natural Resources Director

360.886.5700 Office

[anix@ci.blackdiamond.wa.us](mailto:anix@ci.blackdiamond.wa.us)

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ORDINANCE NO.

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

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

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

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

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

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

WHEREAS, ESSSB 5073 provided that a qualifying patient or his/her designated care provider are presumed to be in compliance, and not subject to criminal or civil sanctions/penalties/consequences, under certain defined circumstances (possession of a limited

number of plants or usable cannabis, cultivation of a limited number of plants in the qualifying patient or designated care provider's residence or in a collective garden); and

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

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

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

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

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

WHEREAS, on the LCB has now issued the new regulations (which appear in chapter 314-55 WAC), and which: prohibits the establishment of recreational marijuana businesses within 1,000 feet of certain identified sensitive uses, require criminal history background checks for licensees, establish qualifications for licensees, limits the amount of space available for recreational marijuana production, describes the manner in which marijuana growing may take place,<sup>1</sup> limits the average inventory on the licensed premises at any time, limits the number of retailers within counties and cities within the counties based on estimated consumption and population data, establishes insurance requirements for licensees, describes the security requirements, requires employees to wear badges, requiring alarm and surveillance systems on the licensed premises, requires that licensees track marijuana from seed to sale, establishes the manner in which free samples of marijuana may be provided, prohibits the sale of soil amendments, fertilizers and other crop production aids, identifies transportation requirements, sign requirements, recordkeeping requirements, identifies a mechanism for enforcement of violations, including the failure to pay taxes, specifies marijuana infused product serving sizes, maximum number of servings and limitations on transactions, identifies marijuana waste disposal restrictions, describes the process for quality assurance testing, extraction and the

<sup>1</sup> Under WAC 314-55-075, recreational marijuana production must take place within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors. Outdoor production may take place in non-rigid greenhouses, other structures, or an expanse of open or cleared ground fully enclosed by a physical barrier. To obscure public view of the premises, outdoor production must be enclosed by a sight obscure wall or fence at least eight feet high. Outdoor producers must meet security requirements described in WAC 314-55-083.

requirements for packaging and labeling, describes advertising limitations, explains the process for licensing suspension, revocation and penalties for violations; and

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

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

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

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

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

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

WHEREAS, a comparison of the LCB's proposed rules on recreational marijuana and chapter 69.51A RCW on medical marijuana demonstrates that there is virtually no state regulatory system for medical marijuana, and that even if local governments decided to adopt the type of medical marijuana system that would protect against the harms identified in the federal

government's enforcement priorities, most local governments do not have the resources to be able to enforce such regulations; and

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

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

WHEREAS, on March 31, 2014, the Washington State Court of Appeals issued a decision in *Cannabis Action Coalition v. City of Kent*, 180 Wash. App. 455, 322 P.3d 1246 (2014), in which the Court determined that the "plain language of ESSSB 5073<sup>2</sup>, as enacted, does not legalize medical marijuana or collective gardens," and "instead, it provides a defense to an assertion that state criminal laws were violated," *id.*, 180 Wash. App. at 472; and

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

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

WHEREAS, on \_\_\_\_\_, 2014, the SEPA Responsible Official issued a threshold decision of non-significance for this ordinance; and

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

WHEREAS, the Planning Commission did not/did recommend approval of this draft ordinance; and

WHEREAS, on \_\_\_\_\_, the Council considered this draft ordinance during its regular meeting; NOW, THEREFORE,

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

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

<sup>2</sup> See, RCW 69.41A.085 and 69.51A.040(3).

## Chapter 20.048

## MEDICAL MARIJUANA PROHIBITED

## Sections:

- 20.048.01001 Findings.  
 20.048.02002 Definitions.  
 20.048.03003 Prohibited Activities.  
 20.048.04004 Uses Not Permitted in Any Zone.  
 20.048.05005 Violations.  
 20.048.06006 Enforcement.

20.08.01001 Findings. The Council adopts all of the “whereas” sections of this Ordinance as findings to support this ban on medical marijuana, as well as the following:

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

B. It is also the purpose of this Ordinance to stem the negative impacts and secondary effects associated with the marijuana uses (on-going or predicted) in the City, including but not limited to the extraordinary and unsustainable demands that have been or will be placed upon scarce City policing, legal, policy and administrative resources; neighborhood disruption, increased transient visitors and intimidation; the exposure of school-age children and other sensitive residents to medical marijuana, illegal sales to both minors and adults; fraud in issuing, obtaining or using medical marijuana prescriptions and murders, robberies, burglaries, assaults, drug trafficking and other violent crimes. The State of Washington has adopted a strict regulatory and enforcement system for the cultivation, processing and sale of recreational marijuana, but there is no state-wide regulatory scheme for medical marijuana. The City acknowledges the federal government’s recently medical marijuana enforcement efforts involving individuals/entities who/that attempted to avoid compliance with the more onerous recreational marijuana system by illegally operating medical marijuana collective gardens. Until new laws are adopted to bridge the gap between recreational and medical marijuana uses,

and there is strict enforcement of these laws, the negative impacts and secondary effects described above are likely to occur/continue.

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

**20.08.02002. Definitions.** For purposes of this Ordinance, the following definitions apply:

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

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

C. "Child Care Center" means an entity that regularly provides child day care and early learning services for a group of children for periods of less than twenty-four hours licensed by the Washington State Department of Early Learning, under chapter 170-295 WAC.

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

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

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

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

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

I. “Elementary School” means a school for early education that provides the first four to eight years of basic education and is recognized by the Washington State Superintendent of Public Instruction.

J. “Game Arcade” means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices where persons under twenty-one years of age are not restricted.

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

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

M. “Library” means an organized collection of resources made accessible to the public for reference or borrowing supported with money derived from taxation.

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

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

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

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

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

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

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

U. "Playground" means a public outdoor recreation area for children, usually equipped with swings, slides and other playground equipment, owned and/or managed by a city, county, state or federal government.

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

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

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

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

Z. "Public Park" means an area of land for the enjoyment of the public, having facilities for rest and/or recreation, such as a baseball diamond or basketball court, owned and/or managed by a city, county, state, federal government or metropolitan park district. Public park does not include trails.

AA. "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; premises where goods and services are offered to the public for retail sale; public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages, and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, buses, ferries, and other public conveyances of all kinds and character, and the depots, stops, and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

BB. "Public Transit Center" means a facility located outside of the public right of way that is owned and managed by a transit agency or city, county, state or federal government for the express purpose of staging people and vehicles where several bus or other transit routes converge. They serve as efficient hubs to allow bus riders from various locations to assemble at a central point to take advantage of express trips or other route to route transfers.

CC. "Recreation center or facility" means a supervised center that provides a broad range of activities and events intended primarily for use by persons under twenty-one years of age, owned and/or managed by a charitable nonprofit organization, city, county, state or federal government.

DD. "Residential treatment facility" means a facility providing for treatment of drug and alcohol dependency;

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

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

GG. "Secondary School" means a high and/or middle school: A school for students who have completed their primary education, usually attended by children in grades seven to twelve and recognized by the Washington State Superintendent of Public Instruction.

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

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

| **20.08.03003. Prohibited Activities.**

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

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

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

**20.08.0404. Use Not Permitted In Any Zone.** The use of any building, structure, location, premises, parcel or land for a medical marijuana dispensary or a collective garden is not allowed in the City, and medical marijuana dispensaries and collective gardens are not permitted use(s) in any zone. So long as this Chapter remains in effect, the City shall not, determine either through interpretation or otherwise, that the use of any building, structure, location, premises or land as a medical marijuana dispensary or collective garden may be permitted in any zone.

**20.08.0505. No Vested or Nonconforming Rights.** This Chapter prohibits medical marijuana dispensaries and collective gardens. Neither this Chapter nor any other City Ordinance, City action, failure to act, statement, representation, certificate, approval, or permit issued by the City or its departments, or their respective representatives, agents, employees, attorneys or assigns, shall create, confer, or convey any vested or nonconforming right or benefit regarding any medical marijuana business, marijuana business or collective garden.

**20.08.0606. Violations.**

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

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

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

PASSED by the City Council of the City of \_\_\_ this \_\_\_ day of \_\_\_\_\_, 20154.

\_\_\_\_\_  
MAYOR

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
City Clerk.

APPROVED AS TO FORM:  
Office of the City Attorney

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

PUBLISHED:  
EFFECTIVE DATE:

DRAFT

DRAFT

CITY OF BLACK DIAMOND, WASHINGTON  
ORDINANCE NO.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WHEREAS, the City SEPA Responsible Official issued a \_\_\_\_\_ for this Ordinance on \_\_\_\_\_, 2014; and

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

WHEREAS, on \_\_\_\_\_, 2014, the City Council (either adopted the ordinance as recommended by the Planning Commission or held another public hearing and adopted this Ordinance); NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND DOES ORDAIN AS FOLLOWS:

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

**CHAPTER 20.08  
PROHIBITION ON RECREATIONAL MARIJUANA**

**Sections.**

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

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

A. The City Council also acknowledges that the State of Washington has not performed any environmental analyses that will assist cities, towns and counties in the adoption of local regulations addressing recreational marijuana uses, or the environmental impacts associated with the individual recreational marijuana businesses. As a result, municipalities must therefore either develop their own analyses or observe these impacts after-the-fact (or, after the recreational marijuana uses

locate and begin operations in cities, towns and counties throughout Washington). Then, the municipalities will be required to “fix” the problems stemming from these uses with their already scarce resources.

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

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

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

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

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

C. "Child Care Center" means an entity that regularly provides child day care and early learning services for a group of children for periods of less than twenty-four hours licensed by the Washington State Department of Early Learning, under chapter 170-295 WAC.

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

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

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

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

H. "Elementary School" means a school for early education that provides the first four to eight years of basic education and is recognized by the Washington State Superintendent of Public Instruction.

I. "Game Arcade" means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices where persons under twenty-one years of age are not restricted.

J. "Library" means an organized collection of resources made accessible to the public for reference or borrowing supported with money derived from taxation.

K. "Marijuana" means all parts of the plant Cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or

preparation of the plant, its seeds or resin. For the purposes of this Ordinance, “cannabis” or “marijuana” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

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

M. “Marijuana, Usable” means dried marijuana flowers. The term “usable marijuana” does not include marijuana-infused products.

N. “Outdoors” means any location that is not “indoors” within a fully enclosed and secure structure.

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

P. “Playground” means a public outdoor recreation area for children, usually equipped with swings, slides and other playground equipment, owned and/or managed by a city, county, state or federal government.

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

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

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

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

U. “Public Park” means an area of land for the enjoyment of the public, having facilities for rest and/or recreation, such as a baseball diamond or basketball court, owned and/or managed by a city, county, state, federal government or metropolitan park district. Public park does not include trails.

V. “Public Transit Center” means a facility located outside of the public right of way that is owned and managed by a transit agency or city, county, state or federal government for the express purpose of staging people and vehicles where several bus or other transit routes converge. They serve as efficient hubs to allow bus riders from various locations to assemble at a central point to take advantage of express trips or other route to route transfers.

W. “Recreation center or facility” means a supervised center that provides a broad range of activities and events intended primarily for use by persons under twenty-one years of age, owned and/or managed by a charitable nonprofit organization, city, county, state or federal government.

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

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

Z. “Secondary School” means a high and/or middle school: A school for students who have completed their primary education, usually attended by children in grades seven to twelve and recognized by the Washington State Superintendent of Public Instruction.

#### **20.08.030. Prohibited Activities.**

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

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

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

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

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

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

**20.08.060. Violations.**

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

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

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

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

PASSED by the City Council of \_\_\_\_\_ this \_\_\_\_<sup>nd</sup> day of \_\_\_\_\_, 20154.

\_\_\_\_\_  
\_\_\_\_\_, Mayor

AUTHENTICATED:

\_\_\_\_\_  
\_\_\_\_\_, City Clerk.

APPROVED AS TO FORM:  
Office of the City Attorney

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

PUBLISHED:  
EFFECTIVE DATE:



DRAFT