



(Revised)
CITY OF BLACK DIAMOND
PLANNING COMMISSION MEETING AGENDA
December 9, 2014 7:00 PM
25510 Lawson Street, Black Diamond, Washington

- 1) CALL TO ORDER, ROLL CALL
- 2) APPROVAL OF MINUTES – November 18th, 2014
- 3) PUBLIC COMMENTS: Individuals wishing to address the Planning Commission regarding any item not on this meeting's agenda may do so at this time.
- 4) WORKSESSION ITEMS
 - a. Medical Marijuana Introduction/Discussion
 - b. Recreational Marijuana Introduction/Discussion
- 5) UNFINISHED BUSINESS
 - a. Update on Comprehensive Planning with Berger ABAM
- 6) DEPARTMENT REPORT
 - a. Appreciation of Commissioner Watson (Current Planning Commission Chair) and his dedication to the City of Black Diamond (Cake & coffee provided by Staff)
 - b. Other items affecting Community Development in Black Diamond
- 7) PUBLIC COMMENTS
- 8) ADJOURN



CITY OF BLACK DIAMOND
PLANNING COMMISSION MEETING MINUTES
November 18, 2014, 7:00 PM

CALL TO ORDER

Chair Keith Watson called the meeting to order at 7:00 p.m. with the introduction of the roll call and the established duties of the Planning Commission.

ROLL CALL

Present: Commissioners Keith Watson, Harvey Senecal, Brian Weber, Gary Davis, Pam McCain, Jim Kuzaro and Sheri Roth
Absent: N/A
Staff: Aaron C. Nix, MPA

APPROVAL OF MINUTES

A MOTION WAS MADE BY COMMISSIONER WEBER TO ACCEPT THE OCTOBER 7, 2014 PLANNING COMMISSION MEETING MINUTES AND SECONDED BY COMMISSIONER SENECA. ISSUE PASSED 6-0.

PUBLIC COMMENTS

No public comments given.

WORKSESSION ITEMS

1. PUBLIC HEARING ON REPEALING SECTION 19.04 ENVIRONMENTAL POLICIES AND REPLACING IT WITH THE PROPOSED LANGUAGE

Mr. Nix gave a brief presentation on the background of the revisions to Chapter 19.04 and fielded some questions from the Commissioners. Mr. Nix stated that he received one comment from a person of the public. It was distributed to the Planning Commissioners earlier in the day, via email and made available at the prior to the Planning Commission meeting/public hearing that evening.

Chair Watson outlined the procedures for the Public Hearing and opened the Public Hearing to anyone from the Public.

Chair Watson asked three (3) times for Public Comment and no one gave testimony with regard to the subject matter under consideration.

Chair Watson closed the Public Hearing and discussion ensued based on this topic matter.

A MOTION WAS MADE BY COMMISSIONER SENECA AND SECONDED BY COMMISSIONER ROTH TO SEND A RECOMMENDATION OF APPROVAL TO THE CITY COUNCIL ON REPEALING

SECTION 19.04 OF BLACK DIAMOND MUNICIPAL CODE AND REPLACING IT WITH THE REVISED LANGUAGE PROVIDED TO THE COMMISSION BY CITY STAFF. ISSUE WAS VOTED ON BY THE COMMISSION AND PASSED 6-0.

2. PUBLIC HEARING ON REPEALLING SECTIONS 16.10, 16.20 AND 16.30 OF BLACK DIAMOND MUNICIPAL CODE AND REPLACING IT WITH THE PROPOSED LANGUAGE

Mr. Nix gave a brief overview of the proposed changes to section 16.10, 16.20 and 16.30 of Black Diamond Municipal Code and the proposed new language.

Chair Watson opened the Public Hearing and called for testimony three (3) times. No Public Comments were given to the Commission. Chair Watson closed the Public Hearing and asked for discussion amongst the Planning Commission Members.

A MOTION WAS MADE BY COMMISSIONER MCCAIN AND SECONDED BY COMMISSIONER WEBER TO SEND A RECOMMENDATION OF APPROVAL TO THE CITY COUNCIL ON REPEALLING SECTIONS 16.10, 16.20 AND 16.30 OF BLACK DIAMOND MUNICIPAL CODE AND REPLACING IT WITH THE REVISED LANGUAGE PROVIDED TO THE COMMISSION BY CITY STAFF. ISSUE WAS VOTED ON BY THE COMMISSION AND PASSED 5-1.

UNFINISHED BUSINESS

Discussion commenced with regard to the Public Participation Plan Handbook and the leaflet created by the Commission. Additional refinement is needed and will commence

DEPARTMENT REPORT

Mr. Nix gave a report of the Department's current permitting activity and the pending reductions in staffing to the current Community Development Department budget proposed for 2015.

The Comprehensive Plan update was discussed with the Commission, with significant hurdles forthcoming.

Several pre-application meetings are forthcoming or have occurred in regard to future development within the City, outside of the approved Master Planned Developments.

PUBLIC COMMENTS

No public comment was given

Chair Watson re-iterated that the next Planning Commission meeting was going to be held on December 9, 2014 at 7:00 pm, there in Council Chambers.

ADJOURN

A Motion was made by Commissioner McCain and seconded by Commissioner Weber to adjourn. The issues was voted on by the Commission and Passed 6-0. The meeting adjourned at 8:01 p.m.

Minutes Respectively Prepared By: A. Nix, CD/NR Director _____

ATTEST:

Keith Watson, Chairman

Planning Commission Secretary

DRAFT

MEMORANDUM

DATE: November 10, 2014
TO: Mayor, City Council, City of Black Diamond
FROM: Carol Morris, Morris Law, P.C., City Attorney
RE: Marijuana -- Recommendations

Medical Marijuana: The City should completely ban medical marijuana uses because there is little to no state regulation of medical marijuana. As a result, the City would have to adopt and enforce a regulatory scheme applicable to medical marijuana, and there is the possibility that the federal government could challenge it (because it does not meet certain established federal priorities in either substance or enforcement). The prohibition would include dispensaries, collective gardens and individual cultivation. A complete ban will not affect anyone's ability to obtain medical marijuana, because it can be purchased from a state-licensed store selling recreational marijuana (if not in Black Diamond, then in Seattle, or some other city that allows recreational marijuana). However, it will mean that any existing medical marijuana businesses would have to apply for and obtain a recreational marijuana license from the State, and be subject to State and City regulations.

Recreational Marijuana: If the City is interested in allowing marijuana uses in Black Diamond (such as recreational marijuana production, processing and retailing), the City should only allow recreational marijuana uses that have obtained licenses from the State of Washington. While the State will not allow recreational marijuana uses to locate within 1,000 feet of certain sensitive uses (like playgrounds), the City should identify the zone(s) where recreational marijuana uses will be the most compatible with surrounding uses. Because recreational marijuana uses are new and little is known about the secondary land use or environmental impacts of such uses, the City may want to allow these uses in a zone(s) where the most intense uses can be absorbed, such as an industrial zone (as the most conservative position). In addition, the recreational marijuana uses should only be allowed with a conditional use permit, so that the City can address the impacts of the individual uses on the surrounding properties to ensure compatibility. Recreational marijuana businesses should also be required to obtain a business license from the City, so a business license ordinance addressing these uses should also be adopted.

MEMO Marijuana

As an alternative, the City may ban recreational marijuana uses until the City can gather more information on the secondary land use impacts. Because the Liquor Control Board has begun issuing licenses and these businesses have opened, we soon will be able to observe the effects of these businesses on community and municipal services.

If the City were interested in prohibiting recreational marijuana uses altogether, there are a number of facts that could be cited in support of a ban. First, the State's analysis of the environmental impacts of such uses was cursory, and the State has not complied with SEPA with regard to individual license applications. At this point in time, the City has no information about the secondary land use impacts of the businesses, such as traffic, noise, odor, need for additional police services, etc. The City doesn't even know whether the State will diligently perform their enforcement responsibilities with regard to recreational marijuana businesses with licenses, so the City could adopt a ban until these secondary land use impacts are known.

If you would like to discuss the liability issues involved with these alternatives, we can discuss them in executive session.

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF _____, 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 _____ TO THE _____ 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,¹ 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 requirements for packaging and labeling, describes advertising limitations, explains the process for licensing suspension, revocation and penalties for violations; and

¹ 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.

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 5073², 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 _____, the City passed Ordinance ____, establishing a six month moratorium on the issuance of permits or licenses for medical marijuana collective gardens; and

WHEREAS, on _____, the City passed Ordinance _____, 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 _____, 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 _____ ORDAINS AS FOLLOWS:

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

² See, RCW 69.41A.085 and 69.51A.040(3).

Chapter 20.08
MEDICAL MARIJUANA PROHIBITED

Sections:

- 20.08.001 Findings.**
- 20.08.002 Definitions.**
- 20.08.003 Prohibited Activities.**
- 20.08.004 Uses Not Permitted in Any Zone.**
- 20.08.005 Violations.**
- 20.08.006 Enforcement.**

20.08.001 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.

20.08.002. 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 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 usable 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 usable marijuana” means dried flowers of the *Cannabis* plant. The term “usable cannabis or usable marijuana” does not include marijuana-infused products or cannabis products.

20.08.003. 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.

20.08.004. 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.

20.08.005. 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.

20.08.006. Violations.

Any violations of this Chapter may be enforced as set forth in Ordinance No. [REDACTED] (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 _____, 2014.

MAYOR

ATTEST/AUTHENTICATED:

City Clerk.

APPROVED AS TO FORM:
Office of the City Attorney

City Attorney

PUBLISHED:
EFFECTIVE DATE:

DRAFT

**CITY OF _____, WASHINGTON
ORDINANCE NO.**

AN ORDINANCE OF THE CITY OF _____, 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 ____ TO THE _____ 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 _____, 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 _____, 2014, 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 _____ DOES ORDAIN AS FOLLOWS:

Section 1. Section A. The City Council adopts the following new chapter 20.08 to the _____ 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 __.__(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 ____nd day of _____, 2014.

_____, Mayor

AUTHENTICATED:

_____, City Clerk.

APPROVED AS TO FORM:
Office of the City Attorney

City Attorney

PUBLISHED:
EFFECTIVE DATE:

Berger ABAM Scope of Work

Black Diamond Comprehensive Plan Update

2014/2015

PROJECT UNDERSTANDING

The City of Black Diamond (City) is required to update its comprehensive plan and deliver it to the Washington State Department of Commerce (DOC) by 30 June 2015. The City has discussed the issues associated with the delay in moving the City's Comprehensive Plan Update forward, including employee turnover, financial limitations and other issues. The DOC has acknowledged these issues and has agreed to help the City of Black Diamond work under this short time frame in order to complete this work and will work with the City as much as possible in order to complete this work in an appropriate time frame as agreed to. It is the intent of the City to meet the June 30, 2015 as closely as possible, realizing that this deadline may not be met due to the quantity of the work load and additional reductions in Staffing expected within the currently proposed 2015/16 future budgets. BergerABAM will work closely with the City to complete the comprehensive plan update, but cannot provide a date certain timeline for the update. The City will be completing documents for the comprehensive plan update which will influence the overall timeline and the City will be responsible for scheduling and facilitating the planning commission and city council work sessions and hearings, and these timelines have not been established.

The Phase 1 scope for work previously authorized by the City and BergerABAM completed preparation of the DOC Checklist, prepared a project schedule, attended the first open house in April 2014 and prepared the open house comment summary. BergerABAM is scoped to complete one additional open house that is anticipated to happen concurrently with the release of the draft comprehensive plan text for public comment. No additional open houses are included as part of BergerABAM's scope of work.

This scope of services includes additional consultant time at the request of City staff, including a vision check-in with the City, additional planning commission work sessions and hearings, and preparing compliance responses for the Puget Sound Regional Council (PSRC) Checklist. Additionally, based on the DOC Checklist completed by BergerABAM and the City, the comprehensive plan update will be a more significant effort than was identified in the City's initial request for proposal.

BergerABAM will work closely with staff during the development of the comprehensive plan and will incorporate public comments from the first and second open houses, and comments from Planning Commission and City Council work sessions and hearings into the draft and final comprehensive plan and development regulations.

OVERALL PROJECT ASSUMPTIONS

The following assumptions include identification of the roles of the consultant and City staff, documentation that the City will provide to the consultant and items that are not part of this scope of work.

The City Council will support the current 2009 Comprehensive Plan vision, including past land use approvals.

Additional visioning is not included as part of the comprehensive plan update.

The City will provide summary of all reasonably funded improvements for transportation, capital facilities, and utilities.

The City will provide a summary of anticipated population projections.

Given that prior approved development in the City will accommodate 20-year forecasted residential population and employment, an urban growth boundary expansion is not anticipated.

The City will complete the Governmental Facilities Plan (including school capital facilities) for forecasting government building needs within Quarter #2 of 2015.

Comprehensive plan and development regulation changes will be processed together. Single Public Hearings will be held by both the Planning Commission and City Council on this integrated document.

The City will provide all comprehensive plan, capital facilities plans, development regulations, approved master plan information, and other City Council adopted plans in MS Word format.

The City will act as the SEPA lead agency, will complete the required SEPA documentation and will issue the SEPA Determination.

A supplemental SEPA environmental impact statement (EIS) is not expected to be required. If one is, the City will be responsible for conducting the elements associated with completing this. This is not included within this scope of work.

Special studies for greenhouse gases or environmental health issues will not be required.

Natural resource field studies will not be required and documentation of environmental conditions for the Natural Environment chapter will be based on existing County, state, and federal data sources.

The City will be responsible for revisions to the Sensitive Aquifer Recharge and Geologic Hazard/Mine Hazard Ordinances.

The City will be responsible for the updates to Forest Practices Regulations (If needed), Floodplain Regulations, Project Review Procedures, and all development regulation updates with the exception of wetlands and sensitive habitats.

The City will be responsible for all Shoreline Master Program preparation work and preparing Shoreline Comprehensive Plan text.

Changes to the City capital facilities plans will not be required as the Master Planned Developer is required to do this under the Development Agreements for both the Villages and Lawson Hills approvals. This work is slated to be completed by the 2nd quarter of 2015 and will be integrated into this update as requested by the current Black Diamond Administrative and Legislative bodies.

A detailed system and programmatic analysis of capital facilities and utility services will not be conducted and the to-be-adopted General Government Facilities (Quarter #2 of 2015, estimated completion date) Plan can be used to inform the update.

The City will be responsible for preparing the Concurrency and Traffic Impact Fee ordinances.

The City Attorney has drafted these and Staff is working to get it onto the Planning Commissions and City's Councils work program in the upcoming months.

Up to eight meetings will be held with City staff; two meetings will be held in Black Diamond, and six meetings will occur via teleconference to coordinate on updates, deliverables, and schedule. BergerABAM will prepare and distribute meeting and teleconference summary documentation.

BergerABAM will update the comprehensive plan and development regulations (up to six times) in strikethrough and underline format to clearly identify the proposed comprehensive plan and development regulation changes.

One round of City staff review for the initial update of the comprehensive plan and development regulations with comments/edits shown in track changes provided to BergerABAM in one consolidated document.

The City will prepare and submit the grant reports to the DOC.

The City to provide one round of comment for DOC and PSRC checklist responses.

The City will prepare all geographic information system (GIS) maps associated with the comprehensive plan update.

The City will prepare and upload website updates of open house, Planning Commission, and City Council meetings.

City staff will prepare staff reports and exhibits for the Planning Commission and City Council work sessions and hearings, and the City will lead the presentations. BergerABAM will peer review up to four staff reports.

BergerABAM will not attend Planning Commission or City Council work sessions or hearings, with the exception of the work session in Task 1.

City staff will provide BergerABAM with summaries of minutes from the Planning Commission and City Council work sessions and hearings.

The City will distribute materials to the Planning Commission and City Council.

The City will prepare the final adoption ordinances for the update process using deliverables from BergerABAM.

BergerABAM will deliver one electronic and one hard copy of the draft and final comprehensive plan and development regulations to the City.

The City will be responsible for the reproduction of the comprehensive plan and development regulations.

SCOPE OF WORK

Task 1: Comprehensive Plan Vision Check-In/City Council Work Session on Vision Assumptions

Based on discussions with City staff, BergerABAM understands that the comprehensive plan update will be a continuation of the 2009 comprehensive plan vision that includes past land use approvals. It will be essential to confirm the City's vision moving forward with this

comprehensive plan work. BergerABAM will provide the City Council with a summary of public comments from the April 2014 open house and ask for City Council confirmation on continuing with the vision of the 2009 comprehensive plan, including past land use approvals.

BergerABAM will prepare a summary report documenting the vision of the 2009 comprehensive plan and baseline existing conditions, including a summary of past land use approvals and associated population, transportation, capital facilities, and utilities. The report will include a summary of the level of service methodology to be evaluated in the comprehensive plan update, including the transportation, capital facilities, and utilities level of service. BergerABAM will meet with the City Council in a work session to confirm the comprehensive plan vision moving forward and level of service methodology.

Deliverables

Summary report documenting the 2009 vision, existing baseline conditions, past land use approvals, and level of service methodology for the comprehensive plan update
Preparation and attendance by one BergerABAM planner, one engineer, and one DKS transportation engineer at one City Council work session

Task 2: Comprehensive Plan and Development Regulations Update

The City will provide electronic MS Word format versions of the existing comprehensive plan and development regulations. Using the completed DOC Checklist, that has been submitted to the DOC, and information obtained from the community during the open houses (which are included in BergerABAM's current contract), the BergerABAM team will work collaboratively with City to update the comprehensive plan and development regulations. BergerABAM will provide the City with draft comprehensive plan and development regulations, and the City staff will be responsible for providing consolidated comments in one document in MS Word format in strikethrough and underline format. BergerABAM will revise the draft documents based on City comments. Comprehensive plan and development regulations will be updated a total of six times following staff (initial review of Draft generated by BergerABAM), Planning Commission (Public hearing and work study as directed by City staff), and City Council (Public Hearing and two work studies as directed by City staff) review. All documents will be clearly identified with a version number for document tracking purposes. The City will prepare all GIS maps for the comprehensive plan update. BergerABAM will update the comprehensive plan and development regulations, prepare the DOC and PSRC checklist responses for the chapters, and provide these documents in editable form. Both the DOC and PSRC checklist responses will address how the comprehensive plan and development regulations are compliant with the Growth Management Act.

The public will have the opportunity to review the draft comprehensive plan and development regulations during work sessions and hearings. The review and revision process is as follows:

BergerABAM will provide a first draft of the updated comprehensive plan and development regulations to City staff, including development of the following chapters: Goals, Vision and

Framework Policies, Population and Employment Character, Natural Environment Chapter, Comprehensive Plan Shoreline Policies, Land Use and Housing Chapter, Transportation Chapter, Capital Facilities and Utilities Chapter, Title 19 Sensitive Areas Ordinance, Capital Facilities, and Utilities and Transportation Chapter.

City staff will present the second draft plan and development regulations prepared by BergerABAM to the Planning Commission at up to two work sessions, and BergerABAM will prepare one set of revisions based on Planning Commission comments.

City staff will present the third revised draft plan and development regulations prepared by BergerABAM to City Council in one work session, and BergerABAM will prepare one set of revisions based on City Council comments.

City staff will present the fourth revised draft plan and development regulations prepared by BergerABAM to the Planning Commission at up to two hearings, and BergerABAM will prepare one set of revisions based on Planning Commission comments.

City staff will present the fifth revised plan and development regulations prepared by BergerABAM to City Council in one hearing, and BergerABAM will prepare one set of revisions based on City Council comments. BergerABAM will provide a package for City submittal to the DOC and PRSC for review and comment.

BergerABAM will prepare the sixth and final revision of the comprehensive plan and development regulations based on DOC and PSRC comments, and City staff will present this to the City Council for final adoption.

City staff will prepare the staff reports for two Planning Commission and two City Council hearings, and BergerABAM will peer review the staff reports for the City.

Comprehensive Plan Chapters and Development Regulations

BergerABAM will prepare the following comprehensive plan and development regulation updates:

Goals and Vision and Framework Policies chapters (using information from Task 1 and including the Community Vision for 2035 and documentation of consistency with King Countywide Planning Policies).

Population and Employment Character chapter (using 20-year population projections from King County and including City-approved development to identify forecasted residential units and employment).

Natural Environment chapter (including an update of critical area information in the 2009 comprehensive plan).

Land Use chapter (using the population data provided by the City and DOC, BergerABAM will work with City staff to determine population and building intensities for the 20-year comprehensive plan horizon, including undeveloped properties and prior-approved development. City staff will develop the comprehensive plan map consistent with City and King County population projections and the DOC population allocation. Given that prior-approved development in the City will accommodate 20-year forecasted residential population and employment, an urban growth boundary expansion is not anticipated.

Housing chapter (including an evaluation of existing and projected housing needs and verification that forecasted housing needs can be met over the next 20-years).

BergerABAM will make minor edits to update the Title 19 Sensitive Areas Ordinance by confirming that reference is made to the use of best available science for wetlands and habitat in the 2009 ordinance. BergerABAM will also include edits to add the federal wetland delineation methods and the Washington State Department of Ecology's proposed new wetland rating system to be adopted in 2014.

The City will be responsible for the updates to Forest Practices Regulations (if needed), Floodplain Regulations and Project Review Procedures, and the Sensitive Aquifer Recharge and Geologic Hazard/Mine Hazard Ordinances, Shoreline Comprehensive Plan Policies and for preparing the Governmental Facilities Plan for forecasting government building needs, including school capital facilities.

Deliverables

Draft comprehensive plan and development regulation for the following chapters: Goals, Vision and Framework Policies, Population and Employment Character, Natural Environment, Land Use and Housing, Transportation, Capital Facilities and Utilities, and the Title 19 Sensitive Areas Ordinance (minor revisions)

Final comprehensive plan and development regulation revisions distributed to City

Up to six rounds of revision to the comprehensive plan and development regulations

Peer review up to four staff reports prepared by City staff

One electronic and one hard copy of draft and final comprehensive plan and development regulations

Capital Facilities and Utilities Chapter

BergerABAM will update the inventory of existing City capital facilities, update forecasted capital facilities, document the proposed location and capacity of proposed facilities, and update the six-year source of public money to finance capital facilities using existing data from City staff. A detailed system and programmatic analysis will not be necessary to complete this work, and the to-be-adopted General Government Facilities Mitigation Fee Plan (estimated completion in quarter #2 of 2015) can be used to inform this work. The update will rely upon the following background materials:

Transportation Improvement Plan – Adopted by the City Council in July 2013

General Sewer Plan – Adopted by the City Council in December 2012

Water System Comprehensive Plan – Adopted by the City Council in December 2009 (to be updated in 2015 as indicated by the City's Public Works Director)

Storm and Surface Water Comprehensive Plan – Adopted by the City Council in July 2010

Trails Plan – Adopted by the City Council in December 2011

Parks, Recreation, and Open Space – Adopted by the City Council in December 2008 (to be updated in 2015)

Fire Impact Fee

General Government Facilities Mitigation Fee Plan – to be readopted by City Council in 2014
BergerABAM will work with City staff to evaluate the implementation and finance schedules for capital projects and facilities. BergerABAM will update the Capital Facilities and Utilities chapter of the comprehensive plan, including utilities, parks and recreation, and public services specifically as follows:

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

Deliverables

Draft comprehensive plan Capital Facilities and Utilities chapter
Up to six rounds of revision to the comprehensive plan Capital Facilities and Utilities chapter
Final comprehensive plan Capital Facilities and Utilities chapter
One electronic and one hard copy of draft and final Capital Facilities and Utilities chapter

Transportation Chapter

The update of the Transportation chapter will rely on City available transportation planning documents and models and will include documentation of the 20-year forecasted traffic and level of service, required pedestrian and bicycle component (multimodal transportation), and future funding capability and a multiyear financing plan.

The BergerABAM team will review the following background materials and assemble the relevant transportation information:

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

The BergerABAM team will highlight areas where the existing Transportation Element of the comprehensive plan has deficiencies that need to be addressed in the Transportation chapter update. Specifically, the BergerABAM team will review the current street network plan and make recommendations for any new roadway facilities for the 2035 planning horizon. The available traffic data, analysis, findings, and input from City staff and the project team will be used to:

Forecast traffic volumes for the year 2035.
Identify specific roadway needs and projects for the City’s Capital Facilities and Utilities chapter.
Make recommendations for pedestrian and bicycle (multimodal transportation) needs and projects.

- Identify project funding sources and update the financing forecast for transportation planning for purposes of the Capital Facilities and Utilities chapter update.
- Prepare responses to the PSRC and DOC checklist related to transportation.
- Provide input on confirming the community comprehensive plan vision and establish traffic study methodology based on vision and state and regional requirements.
- Assemble intersection evening peak period turn movement counts at the study intersections using available count data from the current Transportation Element and recent master plans. (Add-on Expense – Counts could be collected for approximately \$200 per intersection per peak period, as an additional scope of work.)
- Conduct inventory of current transportation system. (Update text and figures to reflect current system.)
- Provide a future travel demand modeling Methods and Assumptions memo to PSRC to gain acceptance prior to forecasting task, coordinate with PSRC staff.
- Update the City's travel demand models (2014 base year and 2035 future year models) using current PSRC land use data and a review of PSRC 2035 model projections at the study area external nodes.
- Forecast 2035 baseline traffic volumes that include funded improvements.
- Update the City's traffic operations models (2014 base year and 2035 future year models) based on a review of current and planned study intersection characteristics.
- Determine state and local system needs and deficiencies to meet future demand.
- Provide transportation system management and demand management programs and strategies
- Identify specific projects to bring local transportation facilities and services to established level of service standards. Future 2035 baseline analysis is a requirement for the update. (Contingent Task – Additional scenarios [beyond 2035 baseline conditions] to test improvements, such as roadway connections, would require separate traffic volume forecasting and analysis – approximately \$3,000 to \$5,000 per future scenario, depending on complexity. This could be added as an additional scope of work.
- Determine pedestrian and bicycle needs and projects. The current plan section would be expanded to identify specific pedestrian, bicycle, and trail projects and programs with City input on needs
- Identify project finance plan and update the six-year transportation plan
 - This is a requirement for the update
 - City staff will provide the funding assessment with consultant input on project priorities/phasing
 - Planning level cost estimates will be provided by consultant
- Provide PSRC checklist for transportation sections
 - Transportation – VISION 2040 and Transportation 2040
 - Transportation – Growth Management Act Requirements
 - Transportation Provisions

Deliverables

- Draft comprehensive plan Transportation chapter
- Up to six rounds of revision to the comprehensive plan Transportation chapter

- Final comprehensive plan Transportation chapter
- One electronic and one hard copy of draft and final Transportation chapter

Project Meetings

BergerABAM will attend up to two meetings with staff held in Black Diamond and up six meetings via teleconference. Additionally, ongoing phone calls and e-mail communication will occur throughout the project. BergerABAM will prepare and distribute meeting and conference call summaries, consisting of major topics discussed and action items.

Deliverables

Preparation for and attendance by two BergerABAM staff and two DKS Transportation staff for two 2-hour in-person meetings and six 1-hour teleconference meetings with City staff

Department of Commerce and Puget Sound Regional Council Approval Process and SEPA Addendum

The City will provide the 60-day notice of intent to adopt the comprehensive plan and development regulations to the DOC and PSRC. A City Council public hearing will be scheduled following incorporation of DOC and PSRC input. The City will manage all coordination with the DOC and PSRC and submit materials to them. BergerABAM will finalize the DOC and PSRC periodic update checklist responses and will provide them to the City for submittal. BergerABAM will complete the required DOC and PSRC plan update documentation with one round of City review and comment.

It is expected that the SEPA documentation provided with this effort will be a non-project SEPA addendum. An addendum was completed to the prior SEPA documentation prepared by the City for the 2009 comprehensive plan update. For the required 2015 update, City staff is anticipating an addendum and will prepare the SEPA addendum during the preparation of the final comprehensive plan and development regulations update. The City staff will be the lead agency, prepare the SEPA documentation, and issue the SEPA determination. The comprehensive plan update is not anticipated to result in the need for an EIS.

Deliverables

Draft DOC checklist responses to City staff

Final DOC checklist responses to City staff

Draft and final PSRC checklist

FEE AND HOURS

The following professional fees, including expenses, will be billed as incurred and will not exceed \$149,970 without written authorization.

Task		Hours	Cost Estimate
Comprehensive Plan Vision Check-In/City Council	BergerABAM	98	\$11,062
Work Session on Vision Assumptions	DKS	13	1,849
Comprehensive Plan and Development Regulations Update	BergerABAM	797	93,595
Expenses	DKS	303	42,939
Total			\$149,970