



CITY OF BLACK DIAMOND
PLANNING COMMISSION MEETING AGENDA
January 6, 2015 7:00 PM
25510 Lawson Street, Black Diamond, Washington

- 1) CALL TO ORDER, ROLL CALL
- 2) ANNUAL ELECTION OF CHAIR & VICE-CHAIR
- 3) APPROVAL OF MINUTES –December 9, 2014
- 4) PUBLIC COMMENTS: Individuals wishing to address the Planning Commission regarding any item not on this meeting’s agenda may do so at this time.
- 5) PUBLIC HEARINGS
 - a. DRAFT Ordinance banning medical Marijuana land uses within the City of Black Diamond.
 - b. DRAFT Ordinance banning recreational Marijuana land uses within the City of Black Diamond.
- 6) NEW BUSINESS
 - a. Master Planned Development Zoning Modification Discussion.
- 7) UNFINISHED BUSINESS
- 8) DEPARTMENT REPORT
- 9) PUBLIC COMMENTS: Individuals wishing to address the Planning Commission regarding any item not on this meeting’s agenda may do so at this time.
- 10) ADJOURN



CITY OF BLACK DIAMOND
PLANNING COMMISSION MEETING MINUTES
DECEMBER 9, 2014, 7:00 PM

CALL TO ORDER

Chair Keith Watson called the meeting to order at 7:02 p.m. with the introduction of the roll call and the established duties of the Planning Commission.

ROLL CALL

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

APPROVAL OF MINUTES

A MOTION WAS MADE BY COMMISSIONER DAVIS TO ACCEPT THE NOVEMBER 18, 2014 PLANNING COMMISSION MEETING MINUTES AND SECONDED BY COMMISSIONER KUZARO. ISSUE PASSED 4-0.

PUBLIC COMMENTS

No public comments given.

WORKSESSION ITEMS

1. Medical/Recreational Marijuana Land-Use Regulation Introduction/Discussion (Issue was combined by the Commission at the time of discussion)

Chair Watson let the Commission know that Attorney Morris had prepared a memo on both medical and recreational Marijuana land-uses and that it was included for the Commission's packet as reference information.

Commissioner Davis mentioned that he agreed with the City Attorney's analysis of this issue and felt that there were still too many unknowns as it relates to this issue at the Federal level and that the City should not allow this land-use issue to move forward at this time.

Commissioner Weber agreed with Commissioner Davis and added that the amount of revenue generation related to this issue has also not been fully addressed at the State and Local level. Commissioner Weber did request that Staff talk with King County Elections to determine what the vote split was on this issue and bring it back to the Commission.

Chair Watson asked the Commission if these comments were the only comments that they had on Medical Marijuana or if it pertained to both issues.

Commissioner Weber stated that his comments pertained to both issues, both medical and recreational.

Mr. Nix summarized the comments made by Attorney Morris in her memo and outlined the options that she offered, as well as other options that other Cities are taking on these issues.

Discussion continued with regard to how potential outcomes associated with both medical and recreational at the State and for the rest of the Country.

The Commission asked Staff to talk with the City's legal counsel if it was possible to word the bans on medical/recreational land-use, contingent on the bans being lifted if the State and Federal issues are resolved and/or even continue on with the Moratoria for both issues.

UNFINISHED BUSINESS

Mr. Nix gave a brief description on the contract with BergerABAM and the Scope of Work worked out with the Consultant. He stated that it was a bare bones attempt at meeting the basic requirements for this update cycle. Specific areas of significant need for this update include Transportation and Capital Facilities Planning elements.

Mr. Nix stated that Staff will be relying on information required to be provided by the MPD's, specifically, General Facilities planning. These materials are not scheduled to be completed until August of 2015. Mr. Nix reiterated that Staff is behind the eight-ball in trying to get this update completed prior to its June 30, 2015 completion deadline. Staff will do the best they can to tee up work products in order to move forward with this update.

The discussion then turned to notice of Public Hearings on the City's website as it pertained to the Villages Plat 2C Public Hearing by Commissioner Weber.

A MOTION WAS MADE BY COMMISSIONER WEBER AND SECONDED BY COMMISSIONER DAVIS REQUESTING THAT STAFF PLACE ALL PUBLIC HEARING DATES AND TIMES ON THE CITY'S OFFICIAL WEBPAGE CALENDAR. THE ISSUE WAS VOTED ON BY THE COMMISSION AND PASSED 4-0.

DEPARTMENT REPORT

Mr. Nix thanked Chair Watson for his service on the Planning Commission and asked everyone to join him in some cheese cake and coffee, provided by Staff.

PUBLIC COMMENTS

No public comment was given

ADJOURN

A Motion was made by Commissioner Weber and seconded by Commissioner Roth to adjourn. This issue was voted on by the Commission and Passed 4-0. The meeting adjourned at 7:57 p.m.

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

ATTEST:

Keith Watson, Chairman

Planning Commission Secretary

DRAFT

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,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

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.

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 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 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:

² 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.

20.08.04004. 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.

20.08.05005. 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.

20.08.06006. 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, 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 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 ____nd day of _____, 20154.

_____, Mayor

AUTHENTICATED:

_____, City Clerk.

APPROVED AS TO FORM:
Office of the City Attorney

City Attorney

PUBLISHED:
EFFECTIVE DATE:

DRAFT

DRAFT

ORDINANCE NO. 14-1025

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, RELATING TO LAND USE AND ZONING, ADOPTING A MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR NEW DEVELOPMENT WITHIN THE MASTER PLANNED DEVELOPMENT (MPD) DISTRICT, EXCLUDING ANY APPLICATIONS SUBJECT TO THE DEVELOPMENT AGREEMENTS APPROVED FOR THE MPD DEVELOPMENTS ENTITLED THE VILLAGES AND LAWSON HILLS; AND SUCH MORATORIUM TO BE EFFECTIVE IMMEDIATELY, DEFINING THE APPLICATIONS SUBJECT TO THE MORATORIUM, DIRECTING STAFF TO SET A DATE FOR A PUBLIC HEARING ON THE MORATORIUM WITHIN THE NEXT SIXTY DAYS, ESTABLISHING SIX MONTHS AS THE TENTATIVE EFFECTIVE PERIOD UNTIL THE COUNCIL PUBLIC HEARING ON THE CONTINUED MAINTENANCE OF THE MORATORIUM, AND DECLARING AN EMERGENCY NECESSITATING IMMEDIATE ADOPTION OF A MORATORIUM.

WHEREAS, the City recently approved two major Master Development Plan projects (the “Villages” included 1,196 acres, to be developed with a maximum of 4,800 low, medium and high density dwelling units, and a maximum of 775, 000 square feet of retail, offices, commercial and light industrial development, schools, recreation and open space; and “Lawson Hills” involves a maximum of 1,250 low, medium and high density dwelling units on 371 acres and a maximum of 390,000 square feet of retail, offices, commercial and light industrial development, schools, recreation and open space);¹ and

WHEREAS, the City Council is planning to hire a consultant to assist the City with its comprehensive plan amendment process, which will address the growth issues related to these approvals; and

¹ These decisions were appealed in *Toward Responsible Development v. City of Black Diamond*, 2014 WL 295838, Court of Appeals, Div. I, January 27, 2014.

WHEREAS, the City also desires to review its development regulations for consistency with the Comprehensive Plan and existing law; and

WHEREAS, these planning efforts would be thwarted if property owners could submit applications for development and “vest” under the existing codes; and

WHEREAS, the City Council may adopt an immediate moratorium for a period of up to six months on the acceptance of certain development permit applications as long as the City Council holds a public hearing on the proposed moratorium within sixty days after adoption (RCW 35A.63.220, RCW 36.70A.390); and

WHEREAS, the City desires to impose an immediate six-month moratorium on the acceptance of development applications for any “development activity,” “development permit” or “project permit” as defined below, for any property within the Master Plan Development (MPD) district, as shown on the City’s Official Zoning Map, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference; Now, therefore,

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

Section 1. Definitions. For the purpose of this Ordinance, the following definitions shall apply:

A. **“Exempt Development Permits”** shall include all of the following permit applications for “development” or “development activity” defined in Black Diamond Municipal Code (BDMC) Section 18.98.005 and for “project permit” applications as defined in BDMC 18.14.010, which: (1) are subject to the Development Agreements executed by the City for The Villages and Lawson Hills; or (2) were determined complete by City staff and submitted to the City on or before the effective date of this Ordinance; or (3) propose development or a

development activity on property located outside the MDP Zone as identified in the City's Official Zoning Map; or (4) any applications for permits which involve interior remodeling of existing structures in the MPD Zone.

B. **“Non-Exempt Development Permits”** shall include any permits or “project permit applications” for any “development activity” defined in the Black Diamond code sections identified above, proposed to take place on property located within the MPD Zone and submitted after the effective date of this Ordinance.

Section 2. Purpose. The purpose of this moratorium is to allow the City to review and analyze the growth, environmental and secondary land use impact of the two large developments approved for the Villages and Lawson Hills on the City, and to determine whether any changes need to be made in the City's Comprehensive Plan and development regulations relating to MPD's. If necessary, the City will propose new Plan and development regulation amendments, hold the necessary public hearings, obtain Planning Commission recommendations and adopt ordinances.

Section 3. Moratorium Imposed. The City Council hereby imposes an immediate six-month moratorium on the acceptance of all non-exempt development permit applications for development activities on property located within the MPD Zone, as shown in the map attached hereto as Exhibit A, which is derived from the City's Official Zoning Map. All such non-exempt applications shall be rejected and returned to the applicant. With regard to the City's acceptance of any exempt development application, such acceptance shall only allow processing to proceed, but shall not constitute an assurance that the application will be approved.

Section 4. Duration of Moratorium. The moratorium imposed by this Ordinance shall commence on the effective date of this Ordinance. As long as the City holds a public hearing on

the moratorium and adopts findings and conclusions in support of the moratorium (as contemplated by Section 5 herein), the moratorium shall not terminate until six (6) months after the date of adoption, or at the time all of the tasks described herein have been accomplished, whichever is sooner. The Council shall make the decision to terminate the moratorium by ordinance, and termination shall not otherwise be presumed to have occurred.

Section 5. Public Hearing on Moratorium. Pursuant to RCW 36.70A.390 and RCW 35A.63.220, the City Council shall hold a public hearing on this moratorium within sixty (60) days of its adoption, or before May 19, 2014. Immediately after the public hearing, the City Council shall adopt findings of fact on the subject of this moratorium and either justify its continued imposition or cancel the moratorium.

Section 6. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 7. Declaration of Emergency. The City Council hereby declares that an emergency exists necessitating that this Ordinance take effect immediately upon passage by a majority vote plus one of the whole membership of the Council, and that the same is not subject to a referendum (RCW 35A.12.130). Without an immediate moratorium on the City's acceptance of non-exempt development applications for property in the MPD Zone, such applications could become vested, leading to development that could be incompatible with the Comprehensive Plan and development regulations eventually adopted by the City. Therefore, the moratorium must be imposed as an emergency measure to protect the public health, safety and welfare, and to prevent the submission of a flood of applications to the City in an attempt to

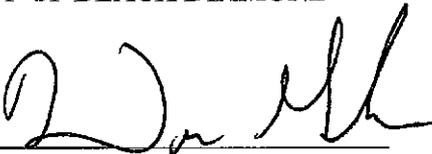
vest rights for an indefinite period of time. This Ordinance does not affect any existing vested rights, nor will it prohibit all development in the City, because those property owners with exempt applications/permits, and those with previously obtained approvals for development may proceed with processing and development, as the case may be.

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

Section 9. Effective Date. This Ordinance shall take effect and be in full force and effect immediately upon passage, as set forth in Section 7, as long as it is approved by a majority plus one of the entire membership of the Council, as required by RCW 35A.12.130.

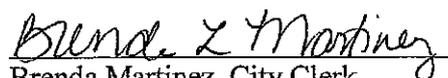
PASSED by the Council and approved by the Mayor of the City of Black Diamond, this 20th day of March, 2014.

CITY OF BLACK DIAMOND



Mayor Dave Gordon

ATTEST/AUTHENTICATED:



Brenda Martinez, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Carol A. Morris, City Attorney

FILED WITH THE CITY CLERK:

PASSED BY THE CITY COUNCIL: 3/20/2014
PUBLISHED: 3/25/2014
EFFECTIVE DATE: 3/20/2014
ORDINANCE NO: 14-1025

ORDINANCE NO. 14-1027

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, RELATING TO LAND USE AND ZONING, ADOPTING FINDINGS OF FACT TO SUPPORT A SIX-MONTH MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR NEW DEVELOPMENT WITHIN THE MASTER PLANNED DEVELOPMENT (MPD) DISTRICT, EXEMPTING CERTAIN PROPERTY AND APPLICATIONS.

WHEREAS, on March 20, 2014, the City adopted Ordinance 14-1025, imposing an immediate six-month moratorium on the acceptance of non-exempt development applications for any “development activity,” “development permit” or “project permit” as defined therein, for certain property within the Master Plan Development (MPD) district, as shown on the City’s Official Zoning Map, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference; and

WHEREAS, on April 17, 2014, the City Council held the 60-day hearing on the moratorium required by RCW 35A.63.220 and RCW 36.70A.390; and

WHEREAS, these statutes require that the City Council adopt findings of fact immediately after the 60-day hearing, as long as the moratorium will continue for the six-month period; Now, therefore,

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

Section 1. Background. The City Council incorporates the “whereas” sections from Ordinance 14-1025 by reference, as if fully set forth herein.

Section 2. Public Hearing. A public hearing was held by the City Council on the moratorium adopted in Ordinance 14-1025. Here is a summary of the testimony received:

A. Stacey Welsh: The Community Development Director, Stacey Welsh, described the facts and purpose relating to this public hearing.

B. William Kombol: Mr. Kombol is the Manager of Palmer Coking Coal Company, the owner of the property subject to the moratorium. He submitted a letter dated April 17, 2014, in which he complained that the moratorium only applied to the Palmer Coking Coal Company's 157 acres. According to Mr. Kombol's letter, Palmer Coking Coal has no development plans for the property, but he has discussed the Company's plans to do a silvicultural thinning of the dense and over-stocked forest on the property. He feared that these plans would be thwarted by the City's MPD moratorium. In sum, he asked that the City Council revise the MPD moratorium ordinance to exempt forest practices on Palmer Coking Coal's 157 acres.

C. Carol Morris: City Attorney Carol Morris explained that the reason that the remaining property in the MPD district (other than the Palmer Coking Coal property) was not included in the moratorium was because it was vested under Development Agreements executed by the property owners and the City. With regard to the application of the moratorium to Palmer Coking Coal Company's identified plans for the property, she explained that the moratorium was adopted for the purpose of preventing the submission of development applications for development activity not to prevent tree cutting activities. Based on her discussion with Aaron Nix on this subject, she learned that Mr. Kombol was referring to an exemption in the tree cutting ordinance, Black Diamond Municipal Code Section 19.30.050(F). Here is the language from the BDMC Section 19.30.050(F), exempting the following activities from the requirements of BDMC Sections 19.30.040, .060, 070, .080, and .090:

Harvesting with a Class II or Class III or Class IV forest practices permit issued by the Washington State Department of Natural Resources under RCW 76.09.050. Provided that, land use and building permits may be denied in accordance with RCW Chapter 76.09 for six years from the date of approval of a Class II or Class III or Class IV forest practices permit.

Ms. Morris explained that the Council could address Mr. Kombol's concern by expressly clarifying that the activities identified in BDMC Section 19.30.050(F) were also exempt from the MPD moratorium.

D. Kristine Hanson. Ms. Hanson commented that she also did not understand why the MPD moratorium singled out Palmer Coking Coal. She asked that Councilmember Edelman recuse herself from voting because she is one of the original appellants in a lawsuit against the City.

E. Carol Morris. City Attorney Morris repeated the rationale for inclusion of the Palmer Coking Coal Company's property in the MPD moratorium, which is because it is zoned MPD. The City is interested in examining the MPD zone to determine whether it should be retained in the City. With regard to the question involving Councilmember Edelman, Ms. Morris stated that the lawsuit against the City did not include the property subject to this moratorium. Further, because all of the Council's actions with regard to this moratorium are legislative and not quasi-judicial, she is not disqualified from voting.

F. Brian Derdowski. Mr. Derdowski thanked the Council for their public service and spoke in favor of the moratorium. He believed that the 157 acres subject to the moratorium should be included in the comprehensive plan review currently underway. Because the issue of the MPD zone was raised in an appeal before the Growth Management Hearings Board, Mr. Derdowski suggested that the Board's decision should be entered into the administrative record on the moratorium. He also thought that the total record of the Yarrow Bay developments should

be entered as findings. Finally, he encouraged the Council not to allow logging in this area during the moratorium because a determination of the trees that should be kept is a decision to be made at the time of development.

Section 3. Council Deliberations. The Council briefly discussed the rationale for the adoption of the MPD moratorium and their favorable view of it. Questions were asked of the City Attorney as to whether an amendment needed to be made to the moratorium ordinance in order to allow Palmer Coking Coal to continue to submit their application(s) for forest practices exemptions from the City's tree cutting ordinance. City Attorney Morris informed the Council that the clarification could be addressed in the findings of fact, if they directed the staff to include it in the findings of fact that would be presented at the next City Council meeting. There was general agreement that the findings of fact should include this language for the Council's consideration at the next Council meeting.

Section 4. Moratorium Continued. The City Council hereby continues the six-month moratorium adopted on March 20, 2014 under Ordinance No. 14-1025, on the acceptance of all non-exempt development permit applications (as defined in that Ordinance) for development activities on property located within the MPD Zone, as such property is shown in the map attached hereto as Exhibit A, which is derived from the City's Official Zoning Map. All such non-exempt applications shall be rejected and returned to the applicant. With regard to the City's acceptance of any exempt development application, such acceptance shall only allow processing to proceed, but shall not constitute an assurance that the application will be approved.

Section 5. Clarification of Moratorium. The moratorium imposed by Ordinance shall not prevent any property owner from submitting an application for an exemption under BDMC Section 19.30.050(F). With regard to the City's acceptance of any such exemption under BDMC

19.30.050(F), such acceptance shall only allow processing to proceed, but shall not constitute an assurance that the application will be approved.

Section 6. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 7. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 8. Effective Date. This Ordinance shall take effect and be in full force and effect five days after publication.

PASSED by the Council and approved by the Mayor of the City of Black Diamond, this 1st day of May, 2014.

CITY OF BLACK DIAMOND



Mayor Dave Gordon

ATTEST/AUTHENTICATED:



Brenda L. Martinez, City Clerk

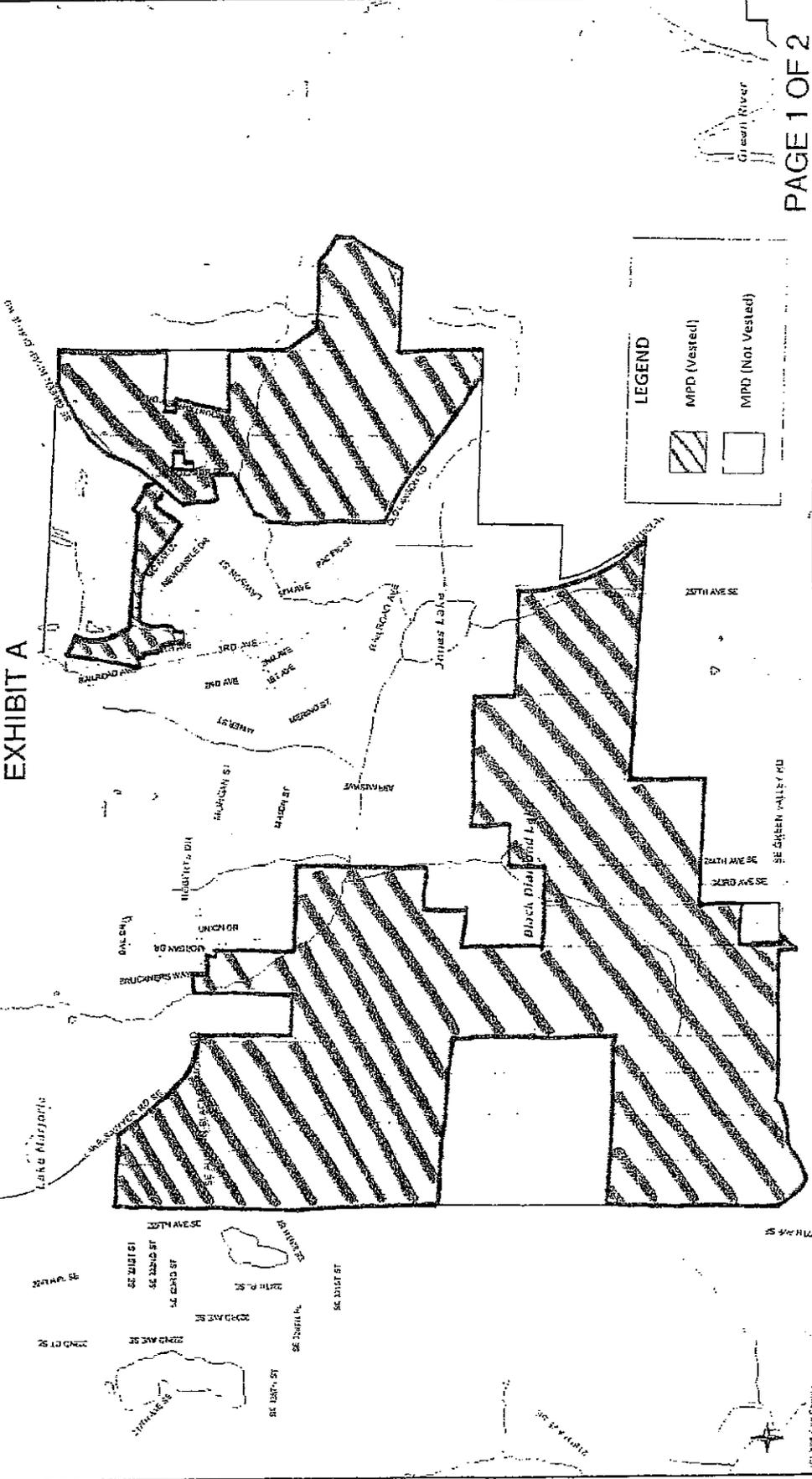
APPROVED AS TO FORM:
Office of the City Attorney

Carol A. Morris, City Attorney

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL: 5/11/14
PUBLISHED: 5/5/14
EFFECTIVE DATE: 5/10/14
ORDINANCE NO: 14-1027

King County iMAP Map

EXHIBIT A



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Source: King County iMAP - Property Information (<http://www.metrokc.gov/GIS/iMAP>)

Date: 4/2/2014



ORDINANCE NO. 14-1034

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, RELATING TO LAND USE AND ZONING, EXTENDING A MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR NEW DEVELOPMENT WITHIN THE MASTER PLANNED DEVELOPMENT (MPD) DISTRICT FOR ANOTHER SIX MONTHS, EXCLUDING ANY APPLICATIONS SUBJECT TO THE DEVELOPMENT AGREEMENTS APPROVED FOR THE MPD DEVELOPMENTS ENTITLED THE VILLAGES AND LAWSON HILLS; DEFINING THE APPLICATIONS SUBJECT TO THE MORATORIUM, DIRECTING STAFF TO SET A DATE FOR A PUBLIC HEARING ON THE MORATORIUM WITHIN THE NEXT SIXTY DAYS, ESTABLISHING SIX MONTHS AS THE EXTENSION PERIOD UNTIL THE COUNCIL PUBLIC HEARING ON THE CONTINUED MAINTENANCE OF THE MORATORIUM EXTENSION AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, on March 20, 2014, the City adopted Ordinance 14-1025, which imposed a six-month moratorium on the City's acceptance of certain applications for development for property zoned Master Planned Development ("MPD"); and

WHEREAS, this moratorium is due to expire on September 20, 2014; and

WHEREAS, since the moratorium was adopted, the City's Community Development Director resigned and an existing City employee has taken the position, leaving the City short staffed to the point that the City has had to hire two planners on contract from outside firms; and

WHEREAS, the reason the City imposed the moratorium has not changed, but additional time is needed for the City to undertake all of the tasks described in Ordinance No. 1027; and

WHEREAS, City Council may extend the moratorium for a period of up to six months on the acceptance of certain development permit applications as long as the City Council holds a

public hearing on the proposed moratorium extension within sixty days after adoption (RCW 35A.63.220, RCW 36.70A.390); and

WHEREAS, the City desires to extend the existing moratorium on the acceptance of development applications for any “development activity,” “development permit” or “project permit” as defined below, for any property within the Master Plan Development (MPD) district, as shown on the City’s Official Zoning Map, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference for another six months; Now, therefore,

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

Section 1. Definitions. For the purpose of this Ordinance, the following definitions shall apply:

A. **“Exempt Development Permits”** shall include all of the following permit applications for “development” or “development activity” defined in Black Diamond Municipal Code (BDMC) Section 18.98.005 and for “project permit” applications as defined in BDMC 18.14.010, which: (1) are subject to the Development Agreements executed by the City for The Villages and Lawson Hills; or (2) were determined complete by City staff and submitted to the City on or before the effective date of this Ordinance; or (3) propose development or a development activity on property located outside the MDP Zone as identified in the City’s Official Zoning Map; or (4) any applications for permits which involve interior remodeling of existing structures in the MPD Zone.

B. **“Non-Exempt Development Permits”** shall include any permits or “project permit applications” for any “development activity” defined in the Black Diamond code sections

identified above, proposed to take place on property located within the MPD Zone and submitted after the effective date of this Ordinance.

Section 2. Purpose. The purpose of this moratorium extension is to allow the City to review and analyze the growth, environmental and secondary land use impact of the two large developments approved for the Villages and Lawson Hills on the City, and to determine whether any changes need to be made in the City's Comprehensive Plan and development regulations relating to MPD's. If necessary, the City will propose new Plan and development regulation amendments, hold the necessary public hearings, obtain Planning Commission recommendations and adopt ordinances.

Section 3. Moratorium Extension Imposed. The City Council hereby extends the moratorium due to expire on September 20, 2014, on the acceptance of all non-exempt development permit applications for development activities on property located within the MPD Zone, as shown in the map attached hereto as Exhibit A, which is derived from the City's Official Zoning Map for another six months. All such non-exempt applications shall be rejected and returned to the applicant. With regard to the City's acceptance of any exempt development application, such acceptance shall only allow processing to proceed, but shall not constitute an assurance that the application will be approved.

Section 4. Duration of Moratorium Extension. The moratorium extension imposed by this Ordinance shall commence on the effective date of this Ordinance. As long as the City holds a public hearing on the moratorium and adopts findings and conclusions in support of the moratorium extension (as contemplated by Section 5 herein), the moratorium extension shall not terminate until six (6) months after the date of adoption, or at the time all of the tasks described herein have been accomplished, whichever is sooner. The Council shall make the decision to

terminate the moratorium by ordinance, and termination shall not otherwise be presumed to have occurred.

Section 5. Public Hearing on Moratorium Extension. Pursuant to RCW 36.70A.390 and RCW 35A.63.220, the City Council shall hold a public hearing on this moratorium extension within sixty (60) days of its adoption, or before October 20, 2014. Immediately after the public hearing, the City Council shall adopt findings of fact on the subject of this moratorium extension and either justify its continued imposition or cancel the moratorium.

Section 6. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 7. Publication and Effective Date. This Ordinance shall be published by an approved summary consisting of the title. This ordinance shall be effective five days after publication, as provided by law.

PASSED by the Council and approved by the Mayor of the City of Black Diamond, this 21st day of August, 2014.

CITY OF BLACK DIAMOND



Mayor Dave Gordon

ATTEST/AUTHENTICATED:


Brenda L. Martinez, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Carol A. Morris, City Attorney

FILED WITH THE CITY CLERK: 08/22/14
PASSED BY THE CITY COUNCIL: 08/21/14
PUBLISHED: ~~08/25/14~~ 8/26/14
EFFECTIVE DATE: ~~08/30/14~~ 8/31/14
ORDINANCE NO: 14-1034

ORDINANCE NO. 14-1036

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, RELATING TO LAND USE AND ZONING, ADOPTING FINDINGS AND CONCLUSIONS FOR THE EXTENSION OF A MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR NEW DEVELOPMENT WITHIN THE MASTER PLANNED DEVELOPMENT (MPD) DISTRICT, EXCLUDING ANY APPLICATIONS SUBJECT TO THE DEVELOPMENT AGREEMENTS APPROVED FOR THE MPD DEVELOPMENTS ENTITLED THE VILLAGES AND LAWSON HILLS, SUCH EXTENSION FOR SIX MONTHS AFTER THE ADOPTION OF ORDINANCE 14-1034, ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, on May 1, 2014, the City adopted Ordinance 14-1025, which imposed a six-month moratorium on the City's acceptance of certain applications for development for property zoned Master Planned Development ("MPD"); and

WHEREAS, on August 21, 2014, the City Council adopted Ordinance 14-1034, extending the moratorium for another six months; and

WHEREAS, on October 2, 2014, the City Council held a public hearing on the continued maintenance of this moratorium for the six month period established in Ordinance 14-1034; and

WHEREAS, after this public hearing, the Council voted to extend the existing moratorium on the acceptance of development applications for any "development activity," "development permit" or "project permit" as defined below, for any property within the Master Plan Development (MPD) district (excluding any applications subject to the development agreements approved for the Villages and Lawson Hills developments), as shown on the City's Official Zoning Map, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference for another six months; Now, therefore,

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

Section 1. Findings. A public hearing was held by the City Council on the moratorium extension in Ordinance 14-1034. Here is a summary of the testimony received during that hearing:

Carol Morris. City Attorney Carol Morris summarized the need for the moratorium as follows: (1) the City's ordinance on Master Planned Developments is basically an ordinance for planned unit developments (or "PUD"), which is an alternative zoning method to traditional lot-by-lot zoning, sometimes called cluster zoning; (2) normally, a PUD is an "overlay" to the underlying zoning that has been adopted for the property; (3) PUD ordinances allow specific variations from the underlying zoning in exchange for certain amenities that provide a benefit to the public; (4) a review of the City's MPD ordinance discloses that there is no underlying zoning district and the development regulations applicable to the property are identified for the first time in a development agreement, which procedure avoids the normal procedure and public notice requirements for the adoption of development regulations; and (5) the City has adopted a new development agreement ordinance that does not allow the adoption of new development regulations through the use of a development agreement. Based on these facts, the City plans to change the procedure to allow for the City Council's consideration of an ordinance establishing the zoning for the subject property, as well as a planned unit development ordinance.

The moratorium needed to be extended because there has been significant personnel turnover and budget changes at the City of Black Diamond. As a result, the MPD moratorium was not addressed during the first six months, but is now a priority.

Proposal by Palmer Coking Coal. In a previous hearing, the Council specifically exempted any tree cutting or forest practice activities (identified in Black Diamond Municipal Code Section 19.30.050(F) from this moratorium.

2. Council Deliberations. The Council voted to continue the moratorium.

3. Moratorium Continued. The City Council hereby continues the six-month moratorium adopted on August 21, 2014 in Ordinance 14-1034, on the acceptance of all non-exempt development permit applications (as defined in that Ordinance) for development activities on property located within the MPD zone, as such property is shown on the map attached to Ordinance 14-1034 as Exhibit A, which is derived from the City's Official Zoning Map. All such non-exempt applications shall be rejected and returned to the applicant. The moratorium imposed by Ordinance 14-1034 shall not prevent any property owner from submitting an application for an exemption under BDMC Section 19.30.050(F). With regard to the City's acceptance of any such application for an exemption under BDMC Section 19.30.050(F), the City's acceptance shall allow processing to proceed, but shall not constitute an assurance that the application will be approved.

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

Section 4. Publication and Effective Date. This Ordinance shall be published by an approved summary consisting of the title. This ordinance shall be effective five days after publication, as provided by law.

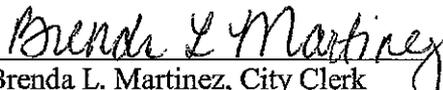
PASSED by the Council and approved by the Mayor of the City of Black Diamond, this
16th day of October, 2014.

CITY OF BLACK DIAMOND



Mayor Dave Gordon

ATTEST/AUTHENTICATED:



Brenda L. Martinez, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Carol A. Morris, City Attorney

FILED WITH THE CITY CLERK: 10/17/14
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ORDINANCE NO: 14-1036