

ORDINANCE NO. 09-893

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY WASHINGTON, AMENDING BLACK DIAMOND MUNICIPAL CODE CHAPTER 2.58 TO CLARIFY THE TERMS UNDER WHICH A BUSINESS LICENSE MAY BE APPLIED FOR, APPROVED, DENIED, AND SUSPENDED OR REVOKED, AS WELL AS THE PROCEDURES FOR APPEALING SUCH ACTIONS

WHEREAS, the City is empowered to regulate the issuance of business licenses pursuant to RCW 35A.11.020 and RCW 35.22.280; and

WHEREAS, clarifying the terms of eligibility for a license and of potential administrative sanctions will help the City to address situations where a business may be creating problems within the community; and

WHEREAS, a few other minor housekeeping changes will make the chapter easier to use for City staff and the public; and

WHEREAS, pursuant to BDMC 2.30.080, the hearing examiner shall have specific authority as granted to the examiner in other chapters of the Black Diamond Municipal Code to consider other matters in addition to land use issues. Now, therefore,

THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON DOES ORDAIN AS FOLLOWS:

SECTION 1. The Section listing appearing at the beginning of Chapter 2.58 of the Black Diamond Municipal Code is hereby amended to read as follows:

**Sections**

- 2.58.010 Business License Required.**
- 2.58.020 Definitions.**
- 2.58.025 Exemptions.**
- 2.58.030 Eligibility for license.**
- 2.58.040 Application procedure—Issuance—Term of License—Renewal.**
- 2.58.050 License Fees.**
- 2.58.060 Separate license required for each business location—Display of License.**
- 2.58.070 Change in ownership or death of licensee.**
- 2.58.080 Enforcement.**
- 2.58.090 Grounds for Revocation or Suspension.**
- 2.58.100 Appeal of Suspension or Revocation.**
- 2.58.110 Service of Notice.**

**2.58.120 Violations—Penalties.**

SECTION 2. Section 2.58.025 of the Black Diamond Municipal Code is amended to read as follows:

**2.58.025 Exemptions.**

The following shall be exempt from the provisions of this chapter:

A. Businesses that do not maintain an office or branch in the City of Black Diamond and who are not engaged in door to door sales or selling goods or services on the streets of the City and are merely performing a service at the request of a Black Diamond resident, including but not limited to home repairs or the installation of appliances, *provided*, the person performing the service must possess any other licenses or certifications required under state or federal laws and the service provider is providing services in Black Diamond on no more than four occasions in any one calendar year.

~~A~~.B. Casual or isolated sales made by persons who are not engaged in the ongoing business of selling the type of property involved, providing that not more than four such sales events are made during any tax year.

~~B~~.C. Minors engaged in babysitting, delivery of newspapers, lawn mowing, car washing, and similar activities.

~~C~~.D. Any instrumentality of the United States, state of Washington, or any political subdivision thereof, with respect to the exercise of governmental functions.

~~D~~.E. All special events sponsored by the city, but not to include participating commercial vendors.

~~E~~.F. Nonprofit organizations, including but not limited to religious, civic, charitable, benevolent, nonprofit, cultural or youth organizations.

~~F~~.G. Businesses subject to the city's utility tax, BDMC Chapter 5.08.

SECTION 2. Section 2.58.030 of the Black Diamond Municipal Code is amended to read as follows:

**2.58.030 Eligibility for license.**

No person shall be eligible for a City of Black Diamond business license if any of the

following conditions apply:

- (1) The applicant is under the age of eighteen.
- (2) The type of business to be conducted under the license is prohibited by zoning or other regulations from being conducted at the location indicated on the license application.
- (3) The applicant knowingly provided false or materially misleading information on the business license application or during the application process.
- (4) The applicant is not eligible under any other statute, law, ordinance, or regulation to be licensed to conduct the type of business for which the City license would be issued.
- (5) At the time of making the application, the applicant's eligibility for the type of license sought is revoked or suspended pursuant to this chapter.
- (6) The applicant, or a business within the City which is owned in whole or part by the applicant, owes to the City of Black Diamond any unpaid license fees and/or unpaid fines imposed for violations of this chapter.

SECTION 3. Section 2.58.040 of the Black Diamond Municipal Code is amended to read as follows:

**2.58.040 Application procedure—Issuance—Term of license—Renewal—Replacement.**

A. *Application.*

(1) Every person required to obtain a license under the provisions of this chapter shall submit an application for such license to the city clerk on a form provided by the city. The applicant is required to provide all information requested on said form, and failure to do so shall be grounds for refusing to issue the business license.

(2) An application for a business license shall be accompanied by the full amount of the fee chargeable for said license, and said fee shall be nonrefundable. The city administrator shall issue a receipt to the applicant for all fees paid.

B. *Issuance.*

- (1) A business license shall be issued only upon payment of all required license fees, review of the application and approval by the city administrator.
- (2) Every license issued shall contain the year of issue, the name and location of the business and any other information the city shall deem necessary.
- (3) An issued license shall be immediately rendered invalid if payment of the required fees is made by a dishonored check, credit card, or any method that results in the City failing to receive proper payment.
- (4) No license issued under this chapter shall be transferable or assignable except as provided in section 2.58.070.

C. *Term of license.* A business license issued pursuant to this chapter shall only be valid during the same calendar year in which it was issued and shall expire as of the 31st of December. Business license renewals must be obtained prior to the thirty-first day of January each year or shall be subject to monetary penalties. *See subsection D, below.*

D. *Renewal.* Upon payment of all applicable fees or charges and verification by the applicant that the information on the renewal license is correct, the City shall renew any business license for the new calendar year, subject to the following conditions:

- (1) If a business renews its license after January 31st, it shall be subject to a monetary penalty in addition to the regular license fee specified in this chapter. No renewal license shall be issued until both the regular license fee and the penalty have been paid in full.
- (2) A license shall not be renewed if, at the time of submitting the application, the license sought to be renewed is revoked or suspended pursuant to this chapter.
- (3) A license shall not be renewed if the applicant, or a business within the City which is owned in whole or part by the applicant, owes the City of Black Diamond any unpaid license fees and/or unpaid fines imposed for violations of this chapter.

E. *Replacement.* A replacement license shall be issued by the city administrator to replace any license previously issued which has been lost, stolen, defaced or destroyed without willful conduct on the part of the licensee, upon the filing by the licensee of an affidavit attesting to that fact and the payment of a twenty-dollar (\$25) fee to the city administrator.

**SECTION 4.** Section 2.58.050 of the Black Diamond Municipal Code is amended to read as follows:

**2.58.050 License fees.**

- A. Calculation of fee. The fee for a City business license shall be determined according to the formulas below and the current fee schedule adopted by the City.
- (1) *Renewals.* For businesses renewing their license, the annual license fee shall be based on how many persons were employed by the business at any one time between January 1st and December 31st of the year immediately preceding the year for which the license is sought. The number of employees shall be provided by the employer.
  - (2) *New businesses.* For a new business that has not yet been established or has not yet reported employee information to the state, the fee shall be determined based on the business owner's estimate of the maximum number of employees likely to be employed during that calendar year.
  - (3) *Businesses Located Outside City.* Any business that is located outside the city but furnishes or performs services within the city and is not exempt under section 2.58.025(A), shall pay a license fee measured by the number of employees of such business that perform any part of their duties within the city.
- B. Penalty for Late Payment. In addition to any other penalties provided for in this chapter, any business which fails to make application for an original business license after commencing business within the City of Black Diamond, or fails to renew an existing license by January 31st, shall be subject to the following penalties based on the number of days delinquent:
- C.

<b>Days Delinquent</b>	<b>Penalty</b>
Up to one month	\$10.00
One month to two months	20.00
Two months to three months	30.00
Three months or more	Twice the cost of the license renewal and this amount may be sent to a collection agency if unpaid after thirty days' notice

C. Reinstatement fee. Any license that has been suspended pursuant to this chapter shall not be reinstated until a fee equal to one-half of the annual licensing fee for that business has been paid and the period of suspension has ended.

SECTION 5. Section 2.58.060 of the Black Diamond Municipal Code is amended to read as follows:

**2.58.060 Separate license required for each business location--Display of license.**

A. Unless otherwise specifically provided herein, no license issued under this chapter shall entitle the license holder to maintain or conduct the business for which the license was issued at any other place or location than that stated in such license. If the place of business is changed from one location to another, the licensee shall return the license to the city administrator, and a new license shall be issued for the new place of business, free of charge.

B. A separate license is required for each branch establishment or location in the City where business is conducted or engaged in, as if such branch establishment or location were a separate business; provided, no separate license fee shall be imposed to obtain the license for such branch establishment or location.

C. A person engaging in two or more businesses at the same location shall be required to obtain separate licenses for each business.

D. All licenses issued pursuant to this chapter shall at all times be posted in a conspicuous place at the location of the business; provided, when the licensee has no established place of business and goes from place to place, then such license must be carried on the person of such licensee while actually engaged in the licensed business.

SECTION 6. Section 2.58.070 of the Black Diamond Municipal Code is hereby amended to read as follows:

**2.58.070 Change in ownership or death of licensee.**

A. Change in ownership. A new license shall be required to be obtained within thirty (30) days of the occurrence of any of the following events:

- (1) a business has been sold or otherwise transferred to an owner whose name does not appear on the existing license;
- (2) a license has been issued to a business that is a partnership and the members of the partnership change;
- (3) a sole proprietor incorporates;
- (4) a corporation dissolves and the business is continued under a new corporation or other type of business entity. In each of these cases, the new owner(s) must submit a new application and pay all fees required.

B. Death of licensee. Should a license holder become deceased before expiration of the license, his or her duly appointed administrator or executor may continue to engage in business under the existing license until the license expires.

SECTION 7. Section 2.58.080 of the Black Diamond Municipal Code is hereby amended to read as follows:

**2.58.080 Enforcement.**

A. It is unlawful for any person, either directly or indirectly, to conduct any business for which a license is required without a license being first procured and kept in effect at all such times as required by this chapter.

B. Any license fee due, but unpaid and delinquent under this chapter, and all penalties thereon, may be assigned to a collection agency as allowed by law or collected in a civil action, which remedy shall be in addition to any and all other existing remedies and penalties provided by the Black Diamond Municipal Code.

C. The city administrator, or his or her designee, shall have the power and authority to suspend or revoke any license issued under the provisions of this chapter. Notice

of such revocation or suspension shall be in writing and shall inform the licensee of the grounds for said suspension or revocation, the length of the suspension or revocation, and the date such suspension or revocation shall begin and end. The notice shall also inform the licensee of the right to appeal, the deadline for filing such an appeal, and that failure to file a timely appeal shall waive all appeal rights. Notice shall be served upon the licensee by one of the methods described in Section 2.58.110. Unless an appeal is timely filed as provided in Section 2.58.100, the suspension or revocation of a business license shall take effect on the eleventh day after receipt of a notice of suspension or revocation.

D. It is unlawful for any person whose license has been revoked or suspended to keep the license issued to him in his possession or under his control, and the same shall be immediately surrendered to the city administrator. When revoked, the license shall be canceled, and when suspended, the license shall be retained by the city administrator during the period of suspension. A licensee who continues to engage in the business for which the license has been revoked or suspended shall be deemed to be operating without a license and shall be subject to any or all penalties provided herein.

SECTION 8. Section 2.58.090 of the Black Diamond Municipal Code is hereby amended to read as follows:

**2.58.090 Grounds for revocation or suspension.**

The city administrator may revoke or suspend any business license issued under the provisions of this chapter on any one or more of the following grounds.

- A. The license was procured by fraud or by false representation of fact;
- B. The licensee has violated or failed to comply with any of the provisions of this chapter; or
- C. The licensee's continued conduct of the business for which the license was issued will result in a substantial threat to the public health, safety or welfare by reason of any of the following:

- 1. The licensee, his employees or agents acting within the scope of their



employment have been convicted of a crime which bears a direct relationship to the conduct of the business for which the license has been issued; or

2. The licensee, or his agents or employees while acting within the scope of their employment, have, in the conduct of the business for which the license has been issued, violated a law or ordinance relating to the public health, welfare or safety ; or

3. The conduct of the business for which the license was issued has resulted in the creation of a public nuisance, as defined by the Black Diamond Municipal Code or by state law.

SECTION 9. Section 2.58.100 of the Black Diamond Municipal Code is hereby amended to read as follows:

**2.58.100 Appeal of suspension or revocation.**

**A. Request for Appeal—Scheduling of hearing.**

(1) A licensee wishing to appeal a notice of suspension or revocation must file a written request to appeal with the city clerk. Such requests must be received by the City or postmarked no later than ten days after the date of service of the notice of suspension or revocation. Telephone, facsimile, or email requests shall not satisfy the requirements of this section. The request to appeal must specify the grounds upon which the appeal is based.

(2) The city clerk shall set a date for a hearing before the city Hearing Examiner, which date shall be at least fourteen (14) but not more than thirty (30) days from the date the appeal is filed, provided, the hearing date may be rescheduled and additional time allowed upon motion of a party or the hearing examiner for good cause shown or upon mutual agreement of the licensee and the city. At least ten (10) days before said hearing, the city clerk shall cause licensee to be served with notice of the hearing as provided in section 2.58.110. The notice shall set forth the date, time and place of the hearing.

**B. Failure to appear—Default judgment.** Failure of licensee to appear for the scheduled hearing after notice of the hearing has been served upon licensee in the manner provided for in this chapter shall result in a default judgment being entered by hearing examiner in favor of the city, affirming the original suspension or revocation action taken by the city administrator. At the city's request, the costs of the hearing shall be assessed by hearing examiner against licensee.

C. Hearing procedure—Decision.

(1) Except as specifically supplemented by this chapter, the hearing shall be conducted according to chapter 2.30 of the Black Diamond Municipal Code.

(2) Within ten (10) days of the conclusion of the hearing, the hearing examiner shall, enter written findings of fact and conclusions of law and shall affirm, modify or reverse the suspension or revocation of the license. The decision of the hearing examiner may impose any reasonable terms as a requirement for continuance of the license. A copy of the hearing examiner's decision shall be served upon the licensee by the methods allowed under section 2.58.110.

D. License in effect pending hearing decision. When a suspension or revocation has been properly appealed, the license shall remain in effect pending the hearing examiner's decision.

E. License must be surrendered upon decision to suspend or revoke. If the hearing examiner's decision is to suspend or revoke the license, the licensee shall immediately surrender the license to the city administrator on the next business day following receipt of the notice of the city council's determination.

SECTION 10. Section 2.58.110 of the Black Diamond Municipal Code is hereby amended to read as follows:

**2.58.110 Service of notices.**

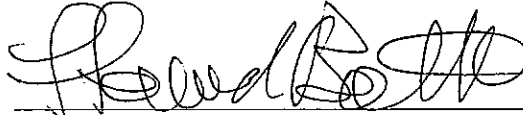
Any notices required by this chapter shall be served upon a party by personal service or sent by both regular first class mail and certified mail, return receipt requested, to the address of the licensee or applicant as shown in the records of the city administrator, or if no such address is shown, to such address as the city administrator is able to ascertain by reasonable effort, or by posting at the location of the business if service by registered mail and two attempts at personal service have failed. Upon a showing by the city that notice has been attempted as provided for in this section, failure of the licensee or applicant to receive such notice shall not release the licensee or applicant from any fees or penalties that result, nor shall such failure extend any time limit set by the provisions of this chapter.

SECTION 11. This Ordinance shall be in full force and effect five (5) days after its passage, approval, posting and publication as provided by law. A summary of this Ordinance may be published in lieu of publishing the Ordinance in its entirety.

SECTION 12. If any provision of this Ordinance is determined to be invalid or unenforceable for any reason, the remaining provisions of this Ordinance shall remain in force and effect.

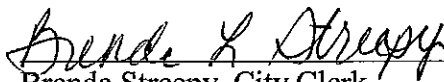
Introduced the 15<sup>th</sup> day of January, 2009.

Passed by a majority of the City Council at a meeting held on the 15<sup>th</sup> day of January, 2009.



\_\_\_\_\_  
Mayor Howard Botts

Attest:

  
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Brenda Streepy, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Loren D. Combs, City Attorney

Published: 1/20/09  
Posted: 1/16/09  
Effective Date: 1/25/09

VSI Client/18256/Tasks2008/340BusinessLicense