

ORDINANCE NO. 09- 898

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, AMENDING TITLE ONE AND TITLE EIGHT OF THE BLACK DIAMOND MUNICIPAL CODE TO ALLOW CODE VIOLATIONS TO BE TREATED AS CIVIL OFFENSES AND TO ADD A CHAPTER ON CODE ENFORCEMENT PROCEDURES

WHEREAS, under the current municipal code, violations of city regulations are a criminal offense; and

WHEREAS, having the option of handling most types of violations as a non-criminal civil violation will be more effective, because police officers and the criminal courts are often ill-prepared to resolve nuisances, building code violations, and similar situations; and

WHEREAS, the City of Black Diamond now has a designated Code Enforcement Officer who specializes in handling such situations; and

WHEREAS, this ordinance will provide clear procedures for enforcement of City regulations, enabling consistency and fairness in enforcement as well as ensuring that when a notice of violation is issued it will meet legal requirements.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Section 1.12 of the Black Diamond Municipal Code is hereby amended to read as follows:

1.12.010 Violations of the municipal code—Penalty.

A. Unless otherwise provided in the penalty provisions of a specific section of the municipal code, any violation of the requirements of the municipal code, including any code, regulation or statute adopted into the municipal code by reference, shall be a gross misdemeanor punishable by a fine of up to five thousand dollars (\$5,000) or imprisonment of up to one year, or by both such fine and imprisonment.

B. Each separate day or portion thereof during which a violation exists shall constitute a separate violation.

C. Unless otherwise prohibited by law, a violation of the municipal code may, at the discretion of the City Attorney or his or her designee, be treated as a civil violation subject to a monetary penalty of five hundred dollars (\$500).

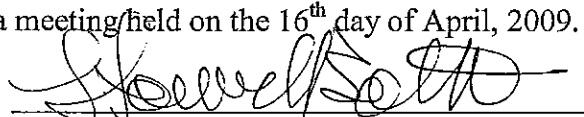
Section 2. A new chapter 8.02 entitled "Code Enforcement" is hereby added to Title 8 of the Black Diamond Municipal Code, to read as shown in the copy attached to this ordinance as Exhibit A and hereby incorporated by reference, with each page of the exhibit being initialed and dated by the mayor.

Section 3. This Ordinance shall be in full force and effect five 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 4. 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.

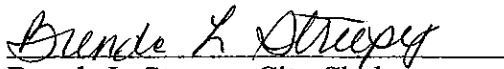
Introduced the 16th day of April, 2009.

Passed by a majority of the City Council at a meeting held on the 16th day of April, 2009.



Mayor Howard Botts

Attest:



Brenda L. Streepy, City Clerk

APPROVED AS TO FORM:

Loren D. Combs, City Attorney

Published: 4-21-09

Posted: 4-17-09

Effective Date: 4-26-09

EXHIBIT A TO ORDINANCE NO. 09-898

Chapter 8.02 Code Enforcement

- 8.02.010 Purpose.
- 8.02.020 Definitions.
- 8.02.030 Violation unlawful – Each day is separate violation – Misdemeanor.
- 8.02.040 Joint and several responsibility and liability.
- 8.02.050 Interference with code enforcement unlawful – Misdemeanor.
- 8.02.060 Methods of service.
- 8.02.070 Voluntary correction – Correction notice.
- 8.02.080 Notice of violation.
- 8.02.090 Stop work order – Violation a misdemeanor.
- 8.02.100 Stop use order – Violation a misdemeanor.
- 8.02.110 Removal of stop work or stop use order – Misdemeanor.
- 8.02.120 Response to notice of violation.
- 8.02.130 Failure to respond.
- 8.02.140 Mitigation hearing – Scheduling – Procedure.
- 8.02.150 Contested hearing – Filing fee – Scheduling – Correction prior to hearing.
- 8.02.160 Contested hearing – Procedure.
- 8.02.170 Contested hearing – Decision of the hearing examiner.
- 8.02.180 Failure to appear – Default order.
- 8.02.190 Monetary penalty.
- 8.02.200 Appeals.
- 8.02.210 Repeat violation or failure to abate – Misdemeanor.
- 8.02.220 Abatement.
- 8.02.230 Additional enforcement procedures.
- 8.02.240 Conflicting code provisions.
- 8.02.250 Duty not creating liability.

8.02.010 Purpose.

The purpose of this chapter is to establish an efficient system of enforcing city regulations that will enable violations to be promptly resolved wherever possible, while providing both appropriate penalties and a full opportunity for alleged violators to have a hearing to contest the violations. This chapter shall apply to all regulations as defined in Section 8.02.020; provided, a violation of any regulation of the Black Diamond Municipal Code may be prosecuted as a criminal violation at the city's discretion, pursuant to BDMC 8.02.030.

8.04.020 Definitions.

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

- A. *Abate* means to act to stop an activity, and/or to repair, replace, remove, or otherwise remedy a condition, where such activity or condition constitutes a violation of a regulation; provided, the actions must resolve the violation to the satisfaction of the city, and the actions taken to abate and the manner in which they are performed must not endanger the general health, safety, and welfare of the community. For the purposes of this chapter, the verbs “abate” and “correct” shall be interchangeable and have the same meaning.
- B. *Act* means doing or performing something.
- C. *City* means city of Black Diamond, Washington.
- D. *Code enforcement officer* means any person or persons authorized by statute, ordinance, regulation, written city policy, or interlocal agreement, or designated by the mayor or his or her designee, to enforce any of the regulations subject to the enforcement and penalty provisions of this chapter, and shall expressly include the city’s code enforcement officers; the city attorney, or his or her designee; the chief of the Black Diamond police department, or his or her designee; the director of the community development department, or his or her designee; the director of the public works department, or his or her designee; building inspectors; construction inspectors; and the chief of King County Fire District #44, or his or her designee.
- E. *Correction notice* means a written statement, issued by a code enforcement officer, notifying a person that property under his or her control is in violation of one or more regulations, and informing such person that a notice of violation may be issued and/or criminal charges filed if the violations are not abated.
- F. *Day or days*, as used in this chapter, shall mean calendar days unless expressly stated otherwise in a given section or subsection. Any portion of a twenty-four (24) hour day shall constitute a full calendar day.
- G. *Hearing examiner* means the Black Diamond hearing examiner and the office thereof established pursuant to Chapter 2.30 BDMC.
- H. *Notice of violation* or *notice of civil violation* means a written statement, issued by

a code enforcement officer, which contains the information required under BDMC 8.02.080, and which notifies a person that he or she is responsible for one or more violations of the Black Diamond Municipal Code.

- I. *Omission* means a failure to act.
- J. *Person* means any individual, firm, business, association, partnership, corporation or other legal entity, public or private, however organized. Because “person” shall include both human and non-human entities, any of the following pronouns may be used to describe a person: he, she, or it.
- K. *Person responsible for the violation* means any of the following: a person who has titled ownership or legal control of the property or structure that is subject to the regulation; an occupant or other person in control of the property or structure that is subject to the regulation; a developer, builder, business operator, or owner who is developing, building, or operating a business on the property or in a structure that is subject to the regulation; or any person who created, caused, or has allowed the violation to occur.
- L. *Regulation* means and includes any of the following, as now enacted or hereafter amended:
 - 1. All standards, regulations, rules, requirements and procedures adopted by the city under this municipal code; and
 - 2. Any provision of the municipal code making reference to this chapter; and
 - 3. The terms and conditions of any permit or approval issued by the city, or any concomitant agreement with the city pursuant to code provisions that make reference to this chapter.
- M. *Repeat violation* means, as evidenced by the prior issuance of a correction notice or a notice of violation, that a violation has occurred on the same property within a two (2) year period, or a person responsible for a violation has committed a violation elsewhere within the city of Black Diamond within a two (2) year period. To constitute a repeat violation, the violation need not be the same type of violation as the prior violation.
- N. *Violation or civil violation* means an act or omission contrary to a “regulation,” as that term is defined in this chapter. A violation continues to exist until abated to the

satisfaction of the city, with each day or portion thereof in which the violation continues constituting a separate violation.

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

The violation of any regulation shall be unlawful. Each day, or portion thereof, in which the violation exists constitutes a separate offense for which separate notices of violation may be issued. In addition, any violation of this chapter shall constitute a misdemeanor; provided, the city attorney, or the city attorney's designee, shall, at his or her discretion, have authority to file a violation as either a civil violation pursuant to this chapter, or as a criminal misdemeanor punishable by imprisonment in jail for a maximum term fixed by the court of not more than ninety (90) days, or by a fine in an amount fixed by the court of not more than one thousand dollars (\$1,000), or by both such imprisonment and fine. All criminal misdemeanor charges filed under this chapter shall be filed with the Black Diamond municipal court. When the city files criminal misdemeanor charges pursuant to this chapter, the city shall have the burden of proving, beyond a reasonable doubt, that the violation occurred.

8.02.040 Joint and several responsibility and liability.

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

8.02.050 Interference with code enforcement unlawful – Misdemeanor.

Any person who intentionally obstructs, impedes, or interferes with any lawful attempt to serve notice of a violation, stop work or stop use order, or an emergency order, or intentionally obstructs, impedes, or interferes with lawful attempts to correct a violation shall be guilty of a misdemeanor punishable by imprisonment in jail for a maximum term fixed by the court of not more than ninety (90) days or by a fine in an amount fixed by the court of not more than one thousand dollars (\$1,000), or by both such imprisonment and fine.

8.02.060 Methods of service.

- A. *Service by regular first class mail shall be equal to personal service. Any correction notice, notice of violation, notice of hearing, or other code enforcement document shall be deemed legally served upon a party by use of regular first class mail, as described in subsection (B)(2) of this section, unless another method of service is expressly required in a particular subsection of this chapter; provided, at the discretion of the code enforcement officer, the code enforcement officer may*

personally serve documents or cause documents to be personally served upon a party.

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

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

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

3. *Posting.* Posting shall mean affixing a copy of the document in a conspicuous place on the property, with at least one (1) copy of such document placed at an entryway to the property or structure if an entryway exists.

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

- C. *Proof of service – Due diligence.* Proof of service shall be made by written affidavit or declaration under penalty of perjury executed by the person effecting the service, declaring the time and date of service, the manner by which service was made, and if service was made solely by posting or publication, facts showing that due diligence was used in attempting to locate a mailing address for the person at whom the notice of violation is directed.
- D. *Additional proof of service not necessary.* The hearing examiner shall not require additional proof of service beyond the requirements in this chapter.

8.02.070 Voluntary correction – Correction notice.

- A. *General.* Prior to the issuance of a notice of violation, the code enforcement officer shall attempt to secure the voluntary correction of a violation by attempting to contact the person responsible for the violation, explaining the violation, and requesting correction. This may be done verbally by the code enforcement officer; provided, a written correction notice shall be served on the person responsible for the violation prior to issuance of a notice of violation; provided further, a written correction notice need not be served nor efforts made to secure voluntary correction where the nature of the violation creates a risk of imminent harm to public health or safety, or where it is a repeat violation as defined in this chapter.
- B. *Service of correction notice.* Service of a written correction notice may be accomplished by regular first class mail or by personal service, at the discretion of the code enforcement officer, or by posting or publishing the correction notice if an address for the person responsible for the violation cannot be ascertained pursuant to BDMC 8.02.060(B)(2).
- C. *Contents of written correction notice.* The written correction notice shall be deemed sufficient if it contains the following information:
1. The name and address of a person responsible for the violation; and
 2. The street address or description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring; and
 3. A description of the violation and a reference to the code provisions that have been violated; and
 4. A statement indicating what corrective actions are required and a correction deadline stating the date and time by which the corrective actions must be completed to the

satisfaction of the code enforcement officer in order for the violator to avoid the issuance of a notice of violation; and

5. A statement indicating that, pursuant to BDMC 8.02.030, a notice of violation may be issued for each day a violation continues, with each violation constituting a separate offense subject to civil and/or criminal penalties.
- D. *Time period in which to correct or abate the violation.* Whenever a person responsible for a violation is served with a written correction notice, he or she shall be given at least ten (10) days from the date of issuance of the notice to correct the violation(s) to the satisfaction of the code enforcement officer; provided, where, in the opinion of the code enforcement officer, a violation creates a risk of imminent harm to public health or safety, or is a repeat violation as defined in this chapter, the city can require less than ten (10) days for correction to be completed. In the event the violation is not corrected within the required time period, the city may, at its discretion, issue separate notices of violation for each day, or portion thereof, that the violation has existed or continues to exist.
- E. *Extension of voluntary correction period or modification of required actions.* An extension of the deadline for voluntary correction, or a modification of any required corrective action noted in the written correction notice, may be granted by the code enforcement officer if the person responsible for the violation has, in the opinion of the code enforcement officer, shown due diligence or made substantial progress in correcting the violations but unforeseen circumstances render correction unattainable within the original deadline.
- F. *Revocation of deadline for compliance.* The original deadline for compliance, or any extension for compliance previously granted by the code enforcement officer, may be revoked and immediate compliance required where, in the opinion of the code enforcement officer, circumstances make immediate correction necessary to avoid an imminent risk of injury to persons or property.
- G. *Use of written voluntary correction agreement.*
1. At the sole discretion of the city, a voluntary correction agreement may be entered into between the person responsible for the violation and the city. The voluntary correction agreement must be in writing.
 2. *Contents of voluntary correction agreement.* The voluntary correction agreement is a contract between the city and the person responsible for the violation under which

that person agrees to abate the violations within a specified time and according to specified conditions. The voluntary correction agreement shall include the following:

- a. The name and address of the person responsible for the violation; and
- b. The street address or a description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring; and
- c. A description of the violation and a reference to the regulations that have been violated; and
- d. An acknowledgement by the person responsible for the violations that the violations described in the correction agreement exist, and that he or she is waiving the right to contest the existence of the violations or to mitigate the penalties; and
- e. The necessary corrective action to be taken, the date or time by which correction must be completed, and an acknowledgement by the person responsible for the violation that he or she will correct the violations within the time specified in the voluntary correction agreement; and
- f. Acknowledgement by the person responsible for the violation that the city may enter the property and inspect the premises as may be necessary to determine compliance with the voluntary correction agreement; and
- g. Acknowledgement by the person responsible for the violation that if the terms of the voluntary correction agreement are not met, the city may enter the property to abate the violation and may also recover its costs and expenses and/or a monetary penalty pursuant to this chapter from the person responsible for the violation; and
- h. The signature or official mark of the person responsible for the violation and the signature or official mark of the code enforcement officer.

3. Failure to comply with voluntary correction agreement.

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

- b. *Penalties and costs.* If the terms of the voluntary correction agreement are not met, the person responsible for the violation may be assessed a monetary penalty in accordance with BDMC 8.02.200, plus all costs and expenses of abatement, as set forth in BDMC 8.02.230, in addition to being issued new notices of violation or criminal charges if the violation has not been abated.

8.02.080 Notice of violation.

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

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

1. The name and address of a person responsible for the violation; and
2. The street address or description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring; and
3. A description of the violation and a reference to the provisions violated; and
4. A statement indicating that the violator must respond to the notice of violation within fourteen (14) days of the date of issuance by doing one of the following:
 - a. Paying the fine and correcting the violation;
 - b. Requesting a mitigation hearing and correcting the violation; or
 - c. Requesting a hearing to contest the violation; and
5. A statement indicating that failure to respond shall result in the violation(s) being deemed committed without requiring further action by the city, and that the full fine amount indicated on the notice of violation shall be due and owing to the city by the person or entity to whom the notice of violation was issued; and
6. A statement indicating that, unless a request to contest the violation or to mitigate the penalty is properly filed, a monetary penalty of five hundred dollars (\$500) for each violation listed on the notice of violation is due and owing at the time the

notice of violation is issued, and must be paid in full within thirty (30) days or may be assigned to a collection agency; and

7. A statement indicating that if the person or entity to whom a notice of violation was issued requests a hearing and fails to attend the hearing, a default judgment shall be entered against the person or entity to whom the violation was issued, with the full amount of the fine indicated on the notice of violation immediately due and owing, and that any unpaid fines and any costs may be assigned to a collection agency after thirty (30) days have elapsed from the date the notice of violation was issued; and
8. A statement indicating that the city may seek to recover from the person to whom the notice of violation was issued the costs to the city of any abatement action taken; and
9. A statement indicating that separate notices of violation may be issued for each day, or portion thereof, in which a violation continues; and
10. A statement indicating that payment of a monetary penalty does not relieve the person or entity named in the notice of violation of the duty to abate the violation, and that failure to abate may result in the issuance of additional notices of violation and/or criminal charges, with additional civil and/or criminal penalties.

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

1.04.090 Stop work order – Violation a misdemeanor.

A stop work order may be issued pursuant to any of the codes or regulations adopted pursuant to BDMC Titles 14, 15, 17, 18 and 19. In addition, the code enforcement officer may issue a stop work order whenever any work that is a) subject to regulation under the Black Diamond Municipal Code, or b) subject to any condition of approval by the city or by an order of the hearing examiner is, in the opinion of the code enforcement officer, being performed in a manner contrary to the provisions of the Municipal Code, or will exacerbate damage that has already been caused to any property, or will materially impair the code enforcement officer's ability to seek compliance. The stop work order shall state the reasons for the order and may be appended to, or incorporate by reference, a notice of violation. The stop work order shall take effect immediately upon service. Service of the

stop work order shall be deemed accomplished upon posting of the notice in the manner described in BDMC 8.02.060.B.3. Violation of a stop work order shall constitute a misdemeanor, punishable by imprisonment in jail for a maximum term fixed by the court of not more than ninety (90) days, or by a fine in an amount fixed by the court of not more than one thousand dollars (\$1,000), or by both such imprisonment and fine.

1.04.100 Stop use order – Violation a misdemeanor.

In addition to any remedy provided for in this chapter, the code enforcement officer may issue a stop use order when allowing the use to continue creates an imminent threat of injury to the health, safety, or welfare of any member of the public, or creates an imminent threat of harm to neighboring property, or will exacerbate injury already caused to any property. The stop use order shall state the reasons for the order; provided, the stop use order may be appended to, or incorporate by reference, a notice of violation. The stop use order shall take effect immediately upon service. Service of the stop use order shall be deemed accomplished upon posting of the notice in the manner described in BDMC 8.02.060.B.3. Violation of a stop use order shall constitute a misdemeanor, punishable by imprisonment in jail for a maximum term fixed by the court of not more than ninety (90) days, or by a fine in an amount fixed by the court of not more than one thousand dollars (\$1,000), or by both such imprisonment and fine.

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

Where a stop work order or a stop use order has been posted in conformity with the requirements of this chapter, removal of such order without the authorization of the city, or the hearing examiner if the matter has been heard by the hearing examiner, shall constitute a misdemeanor, punishable by imprisonment in jail for a maximum term fixed by the court of not more than ninety (90) days, or by a fine in an amount fixed by the court of not more than one thousand dollars (\$1,000), or by both such imprisonment and fine.

8.02.120 Response to notice of violation.

- A. *Time limit.* A person who has been served with a notice of violation must respond to the notice within fourteen (14) days of the date the notice is served. A person may respond to the notice of violation by:
1. Paying the amount of the monetary penalty as set forth in the notice of violation. Partial payment or payment using a check that is rejected for insufficient funds shall not be deemed payment under this subsection. Payment of the fine shall not relieve the person or entity responsible for the violation from the duty to correct or

abate the violation. Additional notices of violation may be issued if the violation goes uncorrected.

2. Contesting the notice of violation by requesting a contested hearing in writing and sending or hand-delivering the request to the city as described in subsection (B) of this section, along with the required filing fee.
3. Seeking to mitigate the monetary penalty by requesting a mitigation hearing to explain the circumstances surrounding the violation. The request to mitigate must be made in writing and sent or hand-delivered to the city as described in subsection B of this section. Requesting to mitigate the penalty shall not relieve the person responsible for the violation from the duty to correct or abate the violation. Additional notices of violation may be issued if the violation goes uncorrected.

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

8.02.130 Failure to respond.

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

8.02.140 Mitigation hearing – Scheduling – Procedure.

The city's director of community development shall schedule and conduct a hearing to mitigate the penalty on a violation when such hearing is properly and timely requested. The hearing shall be scheduled to occur within thirty (30) days of receipt of a proper mitigation request. Notice of the hearing date and time shall be served by regular first class mail to the address of the party who requested the hearing. The date and time for any hearing may be rescheduled by the hearing examiner for good cause upon the motion of a

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

- A. The person responsible for the violation shall, as a condition of proceeding with the mitigation hearing, agree that he or she has committed the violations as set forth in the notice of the violation. The city shall be relieved of any burden of proving that the violations were committed.
- B. If the person who has requested the mitigation hearing decides at the time of the hearing that he or she wishes to contest all or some of the alleged violations, the matters wishing to be contested shall be rescheduled to be heard by the hearing examiner; *provided*, the required filing fee must be paid in full within five (5) calendar days; if the filing fee is not paid, the violations shall automatically be deemed committed.
- C. The person responsible for the violations shall be given the opportunity to explain or provide evidence regarding the nature of the violations, why the violations exist, why the violations have not been abated or corrected, and any other information the community development director determines is relevant.
- D. The city shall be given the opportunity, at its discretion, to provide evidence of the nature of the violation, evidence to rebut assertions made by any party, and any other information or evidence the community development director deems is relevant.
- E. At the conclusion of the hearing, the community development director shall issue an order finding the violations committed, and shall assess a monetary penalty for each violation pursuant to BDMC 8.02.190. Based on the evidence and testimony presented at the hearing, the community development director may reduce the monetary penalty, but is not required to do so.

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

- A. *Filing fee.* The written request for a contested hearing must be accompanied by payment of a twenty-five dollar (\$25) filing fee. This fee is non-refundable and is used to defray the costs of the hearing.
- B. *Notice and scheduling of contested hearing.* Upon timely filing of a request for a hearing and payment of the filing fee, the matter shall be scheduled to be heard at least fourteen (14) but no later than sixty (60) calendar days after the date the request was

received by the city. Notice of the hearing date and time shall be served by regular first class mail to the last known address of the party who requested the hearing. The date and time for any hearing may be rescheduled by the hearing examiner for good cause upon the motion of a party or the hearing examiner.

- C. *Correction of violation prior to hearing.* The hearing may be cancelled and the party requesting the hearing need not appear only if, at least two (2) business days prior to the scheduled hearing, the code enforcement officer determines that the violation has been satisfactorily corrected or abated and the monetary penalty paid in full. Where the scheduled hearing involves a repeat violation as defined in this chapter, the hearing shall not be cancelled unless the new violation has been corrected or abated to the satisfaction of the code enforcement officer and the monetary penalty and costs for the new violation(s) and any monetary penalty and costs owing for the previous violation(s) have been paid in full.

8.02.160 Contested hearing – Procedure.

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

- A. The city shall have the burden of proving, by a preponderance of the evidence, that a violation has occurred.
- B. The parties are responsible for securing the appearance of any witnesses they may wish to call; neither the city nor the hearing examiner shall have the burden of securing any witnesses on behalf of the person who is contesting the violation(s).
- C. Because formal rules of evidence shall not apply to any such hearing, the hearing examiner shall allow hearsay testimony by the parties and not require proof of chain of custody for evidence that is presented; *provided*, the hearing examiner shall determine the weight to be assigned to any evidence presented.
- D. Any notes, reports, summaries, photographs, or other materials prepared by the parties shall be admitted into evidence if requested; *provided*, the parties are free to argue the weight that should be assigned by the hearing examiner to any evidence submitted.

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

8.02.170 Contested hearing – Decision of the hearing examiner.

A. *Contents of order.* Upon the conclusion of a hearing to contest a violation, the hearing examiner may issue a verbal decision pending issuance of the written decision; if necessary, the hearing examiner may delay issuing the written order for up to ten (10) business days following the hearing. In either event, the verbal decision and written order shall contain findings and conclusions based on the record that includes the following information:

1. For each alleged violation of the city code, a statement indicating whether the violation has been found committed or not committed;
2. For violations found committed, the monetary penalties and costs being assessed pursuant to this chapter;
3. For violations found committed, any required corrective actions;
4. For violations found committed, a finding that abatement of the violations by the city is authorized, at the expense of the person responsible for the violations; and
5. A statement notifying the person responsible for the violation that he or she is subject to additional civil and/or criminal penalties if any violation that was the subject of the hearing has not been corrected or abated.

B. *Notice of decision.* The hearing examiner may cause a copy of the decision and order to be served upon the parties at the close of the hearing. When the hearing examiner requires more time to prepare a written order, or when a party fails to appear after requesting a contested hearing, the hearing examiner shall cause a copy of the decision and order to be served on the parties by mailing a copy to each party's last known address within ten (10) business days of the hearing.

8.02.180 Failure to appear – Default order.

A. If the person who requests a hearing to mitigate the penalty then fails to appear at the scheduled hearing after having been given notice in the manner provided for by this

chapter, the full penalty amount indicated in the notice of violation for each violation shall become immediately due and owing.

- B. If the person who requests a hearing to contest the violation(s) then fails to appear after having been given notice in the manner provided for by this chapter, the hearing examiner shall use a standard form to immediately issue a default order, which finds committed all the violations set forth in the notice of violation, and which assesses a fine in the full amount indicated in the notice of violation. In addition, at the request of the city, the hearing examiner shall also impose upon the non-appearing party any costs to the city related to preparation for the hearing. The hearing examiner shall cause a copy of the decision to be served upon the non-appearing party by mailing a copy to the last known address of the non-appearing party within ten (10) business days of the hearing. Upon the motion of a party, the hearing examiner may rescind a default judgment only upon a showing of good cause to do so, and only if such motion has been brought within fourteen (14) calendar days of the date of the hearing at which the default judgment was ordered.

8.02.190 Monetary penalty.

- A. *Monetary penalty.* Each violation of a city regulation deemed committed is subject to a monetary penalty in an amount of five hundred dollars (\$500) unless a different penalty amount for a given violation is expressly authorized or required by a more specific city code provision. Except where the person responsible for the violation has admitted the violation and requested mitigation of the monetary penalty prior to commencement of a contested hearing on the matter, the hearing examiner shall have no authority to reduce the amount of the monetary penalty. Where the person has requested to mitigate the monetary penalty prior to commencement of a contested hearing on the matter, the examiner may reduce the monetary penalty for each violation, but in no case shall the penalty be reduced to an amount less than one hundred dollars (\$100) for each violation found committed.
- B. *Costs.* In addition to the monetary penalty, the hearing examiner shall also impose any costs requested by the city related to preparation and conduct of the contested hearing.
- C. *Payment of monetary penalty.* Any monetary penalties assessed pursuant to this chapter constitute a personal obligation of the person to whom the notice of civil violation is directed. In addition, the monetary penalties assessed pursuant to this chapter may be assessed against the property that is the subject of the enforcement action. Any monetary penalty assessed must be paid in full to the city within thirty

(30) days from the date of service of an uncontested notice of violation or any order of the hearing examiner that assesses monetary penalties.

- D. *Collection of monetary penalty – Use of collection agency.* The city is authorized to take legal action to collect the monetary penalty. Pursuant to Chapter 19.16 RCW, as currently enacted or hereafter amended, the city may, at its discretion, use a collection agency for the purposes of collecting penalties and costs assessed pursuant to this chapter. The collection agency may add fees or interest charges to the original amount assigned to collections as allowed by law. No debt may be assigned to a collection agency until at least thirty (30) calendar days have elapsed from the time that the city attempts to notify the person responsible for the debt of the existence of the debt and that the debt may be assigned to a collection agency for collection if the debt is not paid. Notice of potential assignment to collections shall be made by regular first class mail to the last known address of the person responsible for the violation; provided, inability to ascertain a current mailing address shall not prohibit the debt from being assigned to collections.
- E. *Continuing duty to abate violations.* Payment of a monetary penalty pursuant to this chapter does not relieve the person responsible for the violation of the duty to correct or abate the violation. Additional notices of violation may be issued and/or criminal charges filed for continuing failure to correct or abate a violation.

8.02.200 Appeals.

An appeal of the decision of the hearing examiner must be filed with the King County superior court within twenty-one (21) calendar days of service of the decision, and this shall be the exclusive means to appeal a decision of the hearing examiner rendered under this chapter.

8.02.210 Repeat violation or failure to abate – Misdemeanor.

Where a person or entity has been found to have committed a violation under this chapter, regardless of whether the violation was resolved without penalty, the failure to abate the violation, or the commission of a subsequent violation, or the violation of a written order of the hearing examiner after having received notice of the order as provided in this chapter, shall each constitute a repeat violation and shall each be a misdemeanor subject to the penalties and provisions of BDMC 8.02.030. The city attorney, or the city attorney's designee, shall, at his or her discretion, have authority to file a repeat violation as either a civil violation or as a misdemeanor.

8.02.220 Abatement.

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

B. *Costs of abatement.* The costs of any abatement action taken by the city shall become a charge to the person responsible for the violation. These charges may be assessed against the person responsible for the violation or the property upon which the violation occurred, or both. The city may use any lawful means to collect these charges.

8.02.230 Additional enforcement procedures.

The provisions of this chapter are not exclusive, and may be used in addition to other enforcement and penalty provisions authorized by the Black Diamond Municipal Code or any other law.

8.02.240 Conflicting code provisions.

In the event a conflict exists between the enforcement provisions of this chapter and the enforcement provisions of any international or uniform code, statute, or regulation that is adopted in the Black Diamond Municipal Code and subject to the enforcement provisions of this chapter, the enforcement provisions of this chapter will prevail, unless the enforcement provisions of this chapter are preempted or specifically modified by said code, statute, or regulation.

1.04.250 Duty not creating liability.

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

V:\SnapDocs\Black Diamond - General ('18256')\ORDIN\CodeEnf(2)