

ORDINANCE NO. 09- 899

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, AMENDING CHAPTER 2.30 OF THE MUNICIPAL CODE TO CLARIFY THE APPEAL PROCESS AND PROCEDURES TO BE FOLLOWED BY THE CITY'S HEARING EXAMINER

WHEREAS, the City of Black Diamond recently created the position of hearing examiner to ensure that land use and other matters be handled in a manner that reflects fairness and impartiality and a clear application of complex regulations; and

WHEREAS, by clarifying a few procedural issues in chapter 2.30 of the city's municipal code, the hearing examiner system will work more smoothly and efficiently.

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

Section 1. Section 2.30.010 of the Black Diamond Municipal Code is hereby amended to read as follows:

2.30.010 Creation and purpose.

- A. Creation. The city creates the office of hearing examiner consistent with Article XI, Section 11 of the Washington State Constitution, and Chapters 35A.63 and 58.17 of the Revised Code of Washington, as currently written or hereafter amended.
- B. Purpose. The purpose of this chapter is to provide an efficient and effective system for appeals of land use decisions, code enforcement violations, and other regulatory and administrative actions taken by the city; to provide for consistency and predictability in certain land use decision-making; to establish clear and understandable rules for the application of policies and regulations adopted by the city; and to provide for fair and impartial determinations of appealed matters while ensuring procedural due process.

Section 2. A new section 2.30.085 is hereby added to the Black Diamond Municipal Code, to read as follows:

2.30.085 Filing an appeal.

Unless prohibited by another section of the municipal code or other law, any regulatory decision or civil code enforcement action by the city may be appealed to the city's hearing examiner, including but not limited to denial of a permit and application of zoning or

other land use policies and regulations. Such request for an appeal hearing must be in writing and must briefly describe the basis of the appeal, and must be postmarked or hand delivered to the city clerk no later than ten (10) business days after the date of the decision being appealed. Requests transmitted via telephone, email, or facsimile shall not satisfy the requirements of this section.

Section 3. A new section 2.30.140 is hereby added to the Black Diamond Municipal Code, to read as follows:

2.30.140 Failure to appear—Default judgment.

Failure of appellant to appear for a scheduled hearing after proper notice of the hearing has been provided shall result in a default judgment being entered by the hearing examiner in favor of the city, affirming the action or decision taken by the city that was the subject of the appeal, *provided*, the hearing examiner may, at his or her discretion, nullify the default judgment and reschedule the hearing should appellant, within twenty-four hours of failing to appear, provide the hearing examiner with good cause for failing to appear. At the city's request, the costs of the missed hearing shall be assessed by the hearing examiner against the appellant.

Section 4. A new section 2.30.150 is hereby added to the Black Diamond Municipal Code, to read as follows:

2.30.150 Notice of Decision.

A copy of the hearing examiner's decision shall be served upon the appellant in person or by regular first class mail to the most recent address provided to the city by appellant, or, if the appellant has not provided an address, to any address for the appellant that is maintained in the city's current utility billing records, most recent county tax rolls, or current Department of Licensing records. When notice of a hearing examiner's decision has been given as required in this section, failure of appellant to receive such notice shall not relieve the defendant of the responsibility to pay any fees imposed or to take any other actions ordered in the hearing examiner's decision.

Section 5. A new section 2.30.160 is hereby added to the Black Diamond Municipal Code, to read as follows:

2.30.160 Violation of order of hearing examiner—Gross Misdemeanor.

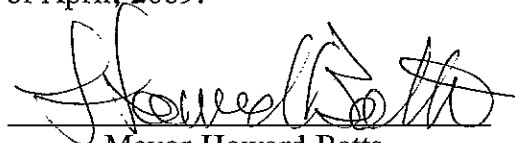
- A. Any person who intentionally violates or refuses to comply with an order of the hearing examiner shall be guilty of a gross misdemeanor punishable by a fine not to exceed five thousand dollars (\$5,000) and imprisonment not to exceed 365 days, or by both such fine and imprisonment. Each day or portion thereof during which the violation or non-compliance continues shall constitute a separate violation.
- B. Nothing in this chapter shall limit the right of the city to pursue all other lawful legal remedies and penalties for continued violation of, or non-compliance with, an order of the hearing examiner.

Section 6. Severability. Each and every provision of this Ordinance shall be deemed severable. In the event that any portion of this Ordinance is determined by final order of a court of competent jurisdiction to be void or unenforceable, such determination shall not affect the validity of the remaining provisions thereof, provided the intent of this Ordinance can still be furthered without the invalid provision.

Section 7. Effective date. This Ordinance shall be in full force and effect five (5) days after publication as required by law. A summary of this Ordinance may be published in lieu of the entire Ordinance, as authorized by state law.

Introduced on the 16th day of April, 2009.

Passed by the City Council on the 16th day of April, 2009.


Mayor Howard Botts

ATTEST:

Brenda L. Streepy, City Clerk

APPROVED AS TO FORM:

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Loren D. Combs, City Attorney

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