

ORDINANCE NO. 09-914

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, ADOPTING NEW STORMWATER MANAGEMENT REGULATIONS AND AMENDING CHAPTER 14.04 OF THE BLACK DIAMOND MUNICIPAL CODE AND DECLARING THIS ORDINANCE A PUBLIC EMERGENCY ORDINANCE AND THUS EFFECTIVE IMMEDIATELY

WHEREAS, in 1995, the Black Diamond City Council adopted the Washington State Department of Ecology's 1992 Stormwater Manual for the Puget Sound Basin as the stormwater standards for the City of Black Diamond; and

WHEREAS, The Department of Ecology's current stormwater manual is the 2005 Stormwater Manual for Western Washington ("2005 Ecology Manual"), which incorporates current best management practices and best available science; and

WHEREAS, Black Diamond is a National Pollution Discharge Elimination System (NPDES) Phase II community, and as such is required to adopt stormwater standards equivalent or more stringent than the 2005 Ecology Manual by August 19, 2009; and

WHEREAS, the Council held a public hearing on this ordinance on June 25, 2009; and

WHEREAS, the Council makes the following findings:

1. Urban development causes significant changes in patterns of stormwater flow from land into receiving waters. Increased surface runoff flows cause stream channel changes that destroy habitat for fish. Water quality can be harmed when runoff carries pollutants such as eroded soil, oil, metals or pesticides into streams, wetlands, lakes, and marine waters or into ground water. Managing stormwater runoff helps to reduce these significant pollution problems that make waterways unhealthy for people and fish.

2. The City has many large undeveloped and underdeveloped parcels that, if developed before the new stormwater management standards are in place, could result in stormwater management plans and facilities that do not meet current best management practices and are not based on best available science. Such inadequate plans and facilities could have a detrimental impact to water quality, fish habitat, and flood control for many years to come.

EMERGENCY ORDINANCE

3. Immediate adoption of the 2005 Ecology Manual as amended by Appendix I of the City's NPDES permit, is by necessary in order to promote the public health, safety and welfare by providing for the comprehensive management of surface and stormwater, erosion control, and flooding.

4. This ordinance is necessary in order to minimize water quality degradation; prevent flood damage, siltation and habitat destruction in the City's creeks, streams and other water bodies; to protect property owners adjacent to developing land from increased runoff rates which could cause stream erosion and damage to public and private property; to promote sound development and redevelopment policies which respect and preserve the City's watercourses and aquatic habitat; to promote low impact development strategies that reduces impervious surface and stormwater runoff; to ensure the safety of City roads and rights-of-way; prevent water quality degradation and ground water recharge through the implementation of comprehensive and thorough permit review, construction inspection, enforcement, and maintenance programs in order to promote the effectiveness of the requirements contained in this chapter.

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

Section 1. Section 14.04.020 of the Black Diamond Municipal Code is hereby amended to read as follows:

14.04.020 Adoption of Manual--Applicability.

A. Stormwater Management Manual Adopted. The February 2005 Edition of the Department of Ecology's Stormwater Management Manual for Western Washington ("SWMMWW"), as modified and amended in subsection B below, is hereby adopted by reference (the "Stormwater Manual"). Stormwater management measures shall be designed, constructed and maintained in accordance with the standards and specifications as set forth in the Stormwater Manual.

B. Amendments to SWMMWW. Volume 1, Chapter 2 of the SWMMWW, titled "Minimum Requirements for New Development and Redevelopment" is not adopted. Appendix 1 of the NPDES Phase II Municipal Stormwater Permit, titled "Minimum Technical Requirements for New Development and Redevelopment" is hereby adopted by reference, replacing Volume 1, Chapter 2 of the SWMMWW. Any conflict between Appendix 1 of the NPDES permit and the remainder of the SWMMWW shall be resolved in favor of Appendix 1.

C. All Development and Redevelopment within the City shall comply with the provisions of this chapter and the Stormwater Manual.

Section 2. Section 14.04.030 of the Black Diamond Municipal Code is hereby amended to read as follows:

14.04.030 Responsible City Official

The City Public Works Director (the “Director”) shall have general charge of and supervision over the administration and enforcement of this chapter. The Director is authorized to adopt policies and procedures for the purposes of implementing the provisions of this chapter.

Section 3. Section 14.04.130 of the Black Diamond Municipal Code is hereby amended to read as follows:

14.04.130 Maintenance and source control.

A. For residential subdivisions, after the Director has released bonds for the project pursuant to Section 14.04.360 the maintenance duties shall be in accordance with the conditions and requirements of final plat approval, but the property owner’s association shall have principal responsibility for source control for practices of its members that may impact quality of runoff.

B. For all projects except residential subdivisions, the proponent or successors shall maintain stormwater drainage facilities and implement the requirements of the approved operation and maintenance manual.

C. The articles of the property owners' association shall include by reference the project's operation and maintenance manual.

D. A covenant stating the property owners' or property owners' association's specific responsibilities shall be included on the face of the plat and recorded against each lot in the subdivision.

Section 4. Section 14.04.170 of the Black Diamond Municipal Code is hereby amended to read as follows:

14.04.170 Review and acceptance.

A. The Director shall review all drainage related submittals for compliance with the specific criteria set forth in this chapter. Incomplete submittals shall be returned to the proponent without being reviewed. An acceptance of a stormwater site plan or construction stormwater pollution prevention plan by the Director does not relieve the proponent or the project engineer from responsibility for ensuring that all facilities are safe and that calculations, plans, specifications, construction and drawings of record comply with normal engineering standards, this chapter and applicable federal, state and local laws and codes.

B. The city shall not issue any underlying permit (e.g., preliminary plat, building permit) until the Director has determined that all requirements of

EMERGENCY ORDINANCE

this chapter have been met. The implementation of the applicable Minimum Requirements shall be a condition of said permit.

Section 5. Section 14.04.210 of the Black Diamond Municipal Code is hereby amended to read as follows:

14.04.210 Minimum setbacks from infiltration facilities.

The minimum setbacks for infiltration facilities shall be as follows:

Site Feature	Infiltration Facility Setback (ft)	Roof Downspout Drywells (ft)		
		Down1	Up	Down
	Up1	Down1	Up	Down
Onsite septic system	100	30	30	10
Water supply well	100	100	30	10
Building foundation2	100	20	50	10
Slopes over 15%	50	n/a	25	na

NOTES:

1. For purposes of this section, "up" means the infiltration facility is up-gradient of the site feature. "Down" means the facility is down-gradient of the site feature.
2. The project engineer shall show calculations that ensure that the line of saturation, measured from the design storm elevation in the facility at a gradient acceptable to the administrator, falls a minimum of one foot below the lowest floor elevation. The administrator may adjust setbacks to buildings, up or down, based on these calculations.

Section 6. Section 14.04.330 of the Black Diamond Municipal Code is hereby amended to read as follows:

14.04.330 Director may modify minimum requirements.

A. This chapter presents minimum standards for achieving the city's goals. The Director has the authority to increase requirements to protect the public interest on the basis of reports pertaining to threatened water quality, erosion, habitat destruction, protection of uninterrupted services and endangerment to property.

B. Alternatives to standard plans, specifications and design details found in the Stormwater Manual may be accepted by the administrator if they meet or exceed the performance of the standards set forth herein.

C. Where requirements in this chapter are covered in any other law, ordinance, resolution, rule or regulation, the more restrictive of the two shall govern.

Section 7. Section 14.04.340 of the Black Diamond Municipal Code is hereby amended to read as follows:

14.04.340 Variances from these standards.

A. Variances from the Minimum Requirements may be granted by the Director pursuant to the procedures and criteria set forth in the Stormwater Manual.

B. All requests for variances must be submitted in writing to the Director, and must clearly state the specific requirements from which a variance is requested and the reasons for said requested variance.

Section 8. Section 14.04.350 of the Black Diamond Municipal Code is hereby amended to read as follows:

14.04.350 Standard Plans and Specifications.

The most recent editions of Standard Specifications for Road, Bridge and Municipal Construction and Standard Plans for Road, Bridge and Municipal Construction, published by the Washington State Department of Transportation shall be the standards used for the design and construction of all drainage and erosion control facilities not explicitly described herein, or in the Black Diamond Engineering Design and Construction Standards. In the event of a conflict between the Standard Specifications, Standard Plans, Black Diamond Engineering Design and Construction Standards, and the Stormwater Manual, the order of preference shall be (1) Stormwater Manual, (2) Black Diamond Engineering Design and Construction Standards, (3) Standard Specifications, (4) Standard Plans.

Section 9. Section 14.04.360 of the Black Diamond Municipal Code is hereby amended to read as follows:

14.04.360 Performance and maintenance bond required.

A. Performance bonding or other appropriate financial guarantees in the amount of 150% of the Director's estimate of the construction costs, shall be required for all projects to ensure construction of drainage facilities in compliance with this chapter. In addition, a project applicant shall post a two-year financial guarantee of the satisfactory performance and

maintenance of any drainage facilities that are scheduled to be assumed by the City for operation and maintenance.

Upon completion and before acceptance of the stormwater facilities the developer shall provide the City with a 2 year maintenance bond or an assignment of funds for 15% of the construction cost of the stormwater facility. At the end of the two-year period, the Director may use any portion of the bond (or funds in an escrow account) to correct facilities constructed with design flaws, restore facilities that have been damaged during the two-year period, or perform maintenance necessary to the operation of facilities. If in the judgment of the administrator, no such corrective work is necessary, the Director will release the bond (or funds in an escrow account).

B. The Director may approve combining this bond with other bonds associated with the project into a single bond; provided, that at no time shall the amount of the bond be less than the amount which would have been required by separate bonds; and provided, that such a bond on its face shall identify those separate bonds that it is intended to replace; and provided, that the portion of the bond for storm drainage and erosion control facilities may be released at a different time than the portions bonding other facilities.

Section 10. A new section 14.04.365 is hereby added to the Black Diamond Municipal Code to read as follows:

14.04.365 Inspections, right of entry, access

The Director is authorized to make such inspections and take such actions as may be required to enforce the provisions of this chapter. Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever the director has reasonable cause to believe that violations of this chapter are present or operating on a subject property or portion thereof, the director may enter such premises at all reasonable times to inspect the same or perform any duty imposed upon the director by this chapter; provided, that if such premises or portion thereof is occupied, the director shall first make a reasonable effort to locate the owner or other person having charge or control of the premises or portion thereof and demand entry. Proper ingress and egress shall be provided to the director to inspect or perform any duty imposed upon the director by this chapter. The director shall notify the responsible party in writing of a failure to provide access. If the responsible party fails to respond within seven days from the receipt of notification, the director may order the work required completed or otherwise address the cause of improper access. The obligation for the payment of all cost that may be incurred or expended by the city in causing such work to be done shall be imposed on the person holding title to the subject property.

Section 11. Section 14.04.370 of the Black Diamond Municipal Code is hereby amended to read as follows:

14.04.370 Immediate correction of drainage problems.

A. When the Director determines that immediate action is required to remedy an erosion or drainage problem, the city may perform the necessary construction or remedial work and bill the property owner, the property owner's association, or project proponent for all costs associated with said work.

B. The Director may order the removal, correction or replacement of any improperly constructed or maintained storm drainage or erosion control system that the administrator has previously reviewed and approved. All costs associated with said removal, correction or replacement shall be billed to the property owner, the property owner's association, or project proponent.

C. The property owner, the property owners' association, and project proponent are jointly and severally liable for all costs, including a reasonable attorney's fee, incurred in any remedial action performed by the city under this chapter. The city may record a lien on the property owned by such jointly and severally liable entities for payment of costs plus reasonable attorney's fees. Interest shall accrue on costs and fees at the same rate as for real estate tax delinquencies and shall commence on the date of completion of remedial action.

D. The city assumes no liability for performing any action authorized under this section.

Section 12. Section 14.04.380 of the Black Diamond Municipal Code is hereby amended to read as follows:

14.04.380 Appeals.

A. Any final decision of the Director with respect to the enforcement or administration of this chapter and the Stormwater Manual shall be final unless timely appealed to the Hearing Examiner by any person aggrieved thereby. Said appeal must be in writing and shall briefly describe the basis of the appeal. Said written appeal must be filed with the city clerk-treasurer within fifteen days of the date of the decision being appealed. Upon receipt of a timely written appeal, the city clerk-treasurer shall advise the Hearing Examiner of the pendency of said appeal.

B. Any person who deems himself aggrieved by a final decision of the Hearing Examiner under this chapter may appeal said decision to King County Superior Court; provided, that said appeal must be filed within twenty one days of the date of the Hearing Examiner's final decision. Any

decision of the Hearing Examiner not so appealed shall be deemed final and conclusive.

Section 13. Section 14.04.400 of the Black Diamond Municipal Code is hereby amended to read as follows:

14.04.400 Sanctions.

A. Any person or entity which violates any of the provisions of this chapter shall be guilty of a misdemeanor punishable by a fine of one thousand dollars per offense or a jail term of up to ninety days per offense or both. Each day during any portion of which any such person is in violation of this chapter is a separate offense and shall be punishable as provided in this section.

B. When a project fails to comply with the terms of this chapter, the Director may issue a written order immediately stopping all work except that which is necessary to bring the project into compliance with this chapter. If the proponent fails to comply with such an order, the proponent shall be guilty of a misdemeanor punishable by a fine of one thousand dollars per offense or a jail term of up to ninety days per offense or both. Each day during any portion of which any such person is in violation of this chapter is a separate offense and shall be punishable as provided in this section. If the person does not comply with any such order within thirty working days of its issuance, the Director may revoke the underlying permit or approval as set forth in Section 14.04.170B.

Section 14. Section 14.04.410 of the Black Diamond Municipal Code is hereby amended to read as follows:

14.04.410 Fees.

A. The city's fee for review of storm drainage and erosion control plans and facilities and on-site inspection of facilities during construction shall be based on the actual amount of time expended at an hourly rate not to exceed seventy-five dollars per hour. If such fees are not paid when due, the administrator may revoke or refuse to grant the underlying permit or approval. If as a result of such action work is not completed, the Director may judge the incomplete work to constitute a drainage problem subject to sanctions described in Section 14.04.400. Additional fees may be assessed according to the City's fee schedule.

B. A connection fee will be charged to the proponent if the designed system will discharge from the site. Said fee shall be adopted by resolution and amended from time to time. Such fee will represent the estimated proportionate share of the proposed connection necessary to cover the cost of public capital stormwater facilities including but not limited to conveyance, treatment, detention/retention systems, and/or comprehensive planning, stream protection and rehabilitation, public education and

EMERGENCY ORDINANCE

outreach programs and other activities associated with construction of stormwater facilities or the avoidance of such construction, impacted by that parcel or parcels of property.

Section 15. Repealer. Sections 14.04.010, 14.04.040, 14.04.050, 14.04.070, 14.04.080, 14.04.090, 14.04.100, 14.04.110, 14.04.120, 14.04.140, 14.04.150, 14.04.160, 14.04.180, 14.04.190, 14.04.200(C), 14.04.220, 14.04.230, 14.04.240, 14.04.250, 14.04.260, 14.04.270, 14.04.280, 14.04.290, 14.04.300, 14.04.310, and 14.04.320 of the Black Diamond Municipal Code are hereby repealed.

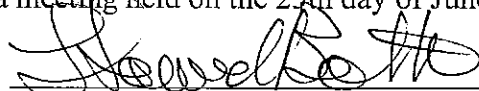
Section 16. This Ordinance is hereby designated as a Public Emergency Ordinance necessary for the protection of public health, safety, public property or the public peace and shall be effective upon adoption.

Section 17. Each and every provision of this Ordinance shall be deemed severable. If any provision of this Ordinance should be deemed to be unconstitutional or otherwise contrary to law by a court of competent jurisdiction, then it shall not affect the validity of the remaining sections so long as the intent of the Ordinance can be fulfilled without the illegal section.

Section 18. 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.

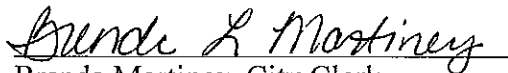
Introduced the 25th day of June, 2009.

Passed by a majority of the City Council at a meeting held on the 25th day of June, 2009.



Mayor Howard Botts

Attest:


Brenda Martinez, City Clerk

APPROVED AS TO FORM:

Loren D. Combs, City Attorney

Published: 6/30/09
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