

ORDINANCE NO. 09-917

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON REGARDING ILLICIT DISCHARGES INTO THE CITY'S STORMWATER DRAINAGE SYSTEM OR CREEKS, LAKES, WETLANDS AND WATERWAYS, AND AMENDING BLACK DIAMOND MUNICIPAL CODE SECTION 14.04.390 AND ADDING A NEW SECTION 14.04.005

WHEREAS, Washington State's Municipal Stormwater General Permits require cities and counties to adopt regulations to prohibit non-stormwater, illicit discharges and connections, and dumping into the permittee's municipal separate storm sewer system; and

WHEREAS, the Department of Ecology has provided sample illicit discharge regulations that cities and counties may incorporate into their existing stormwater drainage regulations in order to comply with the requirements of the General Permits; and

WHEREAS, the following revisions to the City's stormwater drainage regulations incorporate Ecology's proposed regulations and satisfy the City's General Permit requirements regarding illicit discharge;

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

Section 1. A new Section 14.04.005 is hereby added to the Black Diamond Municipal code to read as follows:

**14.04.005 Definitions.**

As used in this chapter, unless the context or subject matter clearing requires otherwise, the works or phrases defined in this section shall have the indicated meanings:

“AKART” means All Known, Available, and Reasonable methods of prevention, control, and Treatment. See also the State Water Pollution Control Act, sections 90.48.010 RCW and 90.48.520 RCW.

“Black Diamond Waterway” means a lake, wetland, creek, stream and secondary channels leading to these water features.

“Hazardous materials” means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

“Hyperchlorinated” means water that contains more than 10mg/Liter chlorine.

“Illicit connection” means any man-made conveyance that is connected to a municipal separate storm sewer without a permit, excluding roof drains and other similar type connections. Examples include sanitary sewer connections, floor drains, channels, pipelines, conduits, inlets, or outlets that are connected directly to the municipal separate storm sewer system.

“Illicit discharge” means any discharge to a municipal separate storm sewer or Black Diamond Waterway that is not composed entirely of stormwater except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities.

“Municipal separate storm sewer system” (MS4) means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

- a. Owned and operated by the City of Black Diamond;
- b. Designed or used for collecting or conveying stormwater;
- c. Which is not part of a Publicly Owned Treatment Works (POTW).

“POTW” means any device or system used in treatment of municipal sewage or industrial wastes of a liquid nature which is publicly owned; and

d. Which is not a combined sewer. “Combined sewer” means a system that collects sanitary sewage and stormwater in a single sewer system.

“Non-stormwater discharge” means any discharge to the storm drain system that is not composed entirely of stormwater.

“Pollutant” means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter or any kind.

“Premises” means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.

“Storm drainage system” means publicly owned facilities, including the city’s municipal separate storm sewer system, by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention or detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

“Stormwater pollution prevention plan” means a document which describes the best management practices and activities to be implemented by a person to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems, and/or receiving waters to the maximum extent practicable.

Section 2. Section 14.04.390 of the Black Diamond Municipal Code is amended to read as follows:

**14.04.390 Protection of storm drainage systems.**

A. Damage or Obstruction. It shall be considered a violation of this chapter to:

1. Cause or permit damage to public or private storm drainage facilities;
2. Cause or permit horses, cattle or other domestic animals to enter drainage systems or waters of the United States;
3. Cause or permit grading, clearing, grubbing, filling or any other land surface changes such as traversing in a motor vehicle to take place in such a way as to allow sediment from the property to directly or indirectly enter into a drainage system or waters of the United States;
4. Cause or permit work that would transmit sediment from one part of a drainage system to another;
5. Unless approved by the administrator, cause or permit the placement of any obstructions, in waters of the United States, which would prohibit free fish passage under all flow conditions; or
6. Unless approved by the administrator, cause or permit the removal from waters of the United States, except under emergency conditions, of any naturally occurring woody debris. Emergency conditions may consist of flow blockage which, in the discretion of the administrator, threatens life or property.

B. Illicit Discharges

1. Prohibited discharges. Prohibition of illegal discharges. No person shall throw, drain, or otherwise discharge, cause or allow others under its control to throw, drain or otherwise discharge into the municipal storm drain system and/or surface and ground waters any materials other than stormwater. Examples of prohibited contaminants include but are not limited to the following:

- a. Trash or debris.
- b. Construction materials.
- c. Petroleum products including but not limited to oil, gasoline, grease, fuel oil and heating oil.
- d. Antifreeze and other automotive products.
- e. Metals in either particulate or dissolved form.
- f. Flammable or explosive materials.
- g. Radioactive material.
- h. Batteries.
- i. Acids, alkalis, or bases.
- j. Paints, stains, resins, lacquers, or varnishes.
- k. Degreasers and/or solvents.
- l. Drain cleaners.
- m. Pesticides, herbicides, or fertilizers.
- n. Steam cleaning wastes.
- o. Soaps, detergents, or ammonia.

- p. Swimming pool or spa filter backwash.
- q. Chlorine, bromine, or other disinfectants.
- r. Heated water.
- s. Domestic animal wastes.
- t. Sewage.
- u. Recreational vehicle waste.
- v. Animal carcasses.
- w. Food wastes.
- x. Bark and other fibrous materials.
- y. Lawn clippings, leaves, or branches.
- z. Silt, sediment, concrete, cement or gravel.
- aa. Dyes.
- bb. Chemicals not normally found in uncontaminated water.
- cc. Any other process-associated discharge except as otherwise allowed in this section.
- dd. Any hazardous material or waste not listed above.

2. Allowable discharges. The following types of discharges shall not be considered illegal discharges for the purposes of this chapter unless the director determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or groundwater:

- a. Diverted stream flows.
- b. Rising ground waters.
- c. Uncontaminated ground water infiltration –as defined in 40 CFR 35.2005(20).
- d. Uncontaminated pumped ground water.
- e. Foundation drains.
- f. Air conditioning condensation.
- g. Irrigation water from agricultural sources that is commingled with urban stormwater.
- h. Springs.
- i. Water from crawl space pumps.
- j. Footing drains.
- k. Flows from riparian habitats and wetlands.
- l. Discharges from emergency fire fighting activities.

3. Conditional Discharges. The following types of discharges shall not be considered illegal discharges for the purposes of this chapter if they meet the stated conditions, or unless the director determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or groundwater:

- a. Potable water, including water from water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges shall be de-chlorinated to a concentration of 0.1 ppm or less, pH-adjusted, if necessary and in volumes and velocities controlled to prevent re-suspension of sediments in the stormwater system;

- b. Lawn watering and other irrigation runoff are permitted but shall be minimized;
- c. De-chlorinated swimming pool discharges. These discharges shall be de-chlorinated to a concentration of 0.1 ppm or less, pH-adjusted, if necessary and in volumes and velocities controlled to prevent re-suspension of sediments in the stormwater system;
- d. Street and sidewalk wash water, water used to control dust, and routine external building wash down that does not use detergents are permitted if the amount of street wash and dust control water used is minimized. At active construction sites, street sweeping must be performed prior to washing the street;
- e. Non-stormwater discharges covered by another NPDES permit, provided, that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations; and provided, that written approval has been granted for any discharge to the storm drain system;
- f. Other non-stormwater discharges. The discharges shall be in compliance with the requirements of a stormwater pollution prevention plan (SWPPP) reviewed and approved by the city, which addresses control of such discharges by applying AKART to prevent contaminants from entering surface or ground water.

C. Prohibition of Illicit Connections.

- 1. The construction, use, maintenance, or continued existence of illicit connections to the storm drain system is prohibited.
- 2. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- 3. A person is considered to be in violation of this section if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

D. Enforcement. In addition to any other remedies set forth in this chapter or available at law, the City shall have the remedies set forth in this subsection for any violation of the provisions of this section. The choice of enforcement action and the severity of any penalty shall be based on the nature of the violation, the damage or risk to the public or to public resources, and/or the degree of bad faith of the person subject to the enforcement action.

1. Notice of Violation/Cease and Desist Order. The Director shall have the authority to serve a person a Notice of Violation/Cease and Desist Order if an action is being undertaken or a condition exists in violation of this section.

a. Content of Notice and Order. The Notice and Order shall contain:

1. A description of the specific nature, extent, and time of violation and the damage or potential damage; and

2. A notice that the violation or the potential violation cease and desist, and, in appropriate cases, the specific corrective action to be taken within a given time. A civil penalty under subsection (D)(2) of this section may be issued with the order.

b. Notice. The order shall be posted at the subject property and a letter containing the Notice and Order sent by certified mail, return receipt requested, to the property owner and any other person violating this chapter.

c. Effective Date. The Order issued under this section shall become effective immediately upon posting of the stop work order on the premises.

d. Compliance. Failure to comply with the terms of a Notice of Violation/Cease and Desist Order shall result in enforcement actions including, but not limited to, the issuance of a civil penalty.

2. Civil Penalty. Any violation of the provisions of this section shall subject the offender to a civil penalty of up to \$50.00 for each of the first five days that a violation exists and up to \$100.00 for each subsequent day of violation from the sixth day of the violation. The civil penalty constitutes a personal obligation of the person to whom the civil penalty is directed. The debt shall be collectible in the same manner as any other civil debt owing to the city. The city shall be entitled to recover its attorneys' fees and costs if litigation is necessary to collect the civil penalty. Payment of any monetary penalty in accordance with this chapter shall not relieve any person of the duty to correct the violation as set forth in the applicable Notice of Violation/Cease and Desist Order.

E. In addition to the enforcement provisions set forth in this chapter, a violation of this section shall constitute a nuisance and shall be subject to the procedures of BDMC Chapter 8.16. Notwithstanding any other provisions of this chapter, whenever it appears to the director that unsafe conditions exist causing pollution in the surface water system which can be immediately identified and which requires emergency action to protect the public health or safety, the director is authorized to enter at all reasonable times in or upon any property, public or private, for the purpose of inspecting and investigating such unsafe conditions.

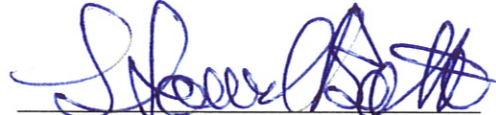
Section 3. Severability. Each and every provision of this Ordinance shall be deemed severable. In the event that any portion of this Ordinance is determined by final order of a court of competent jurisdiction to be void or unenforceable, such determination shall not affect the validity of the remaining provisions thereof, provided the intent of this Ordinance can still be furthered without the invalid provision.

Section 4. 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 the 6<sup>th</sup> day of August, 2009.

Passed by the City Council on the 6<sup>th</sup> day of August, 2009.

Approved by the Mayor on the 6th day of August, 2009.

  
Howard Botts, Mayor

ATTEST:

  
Brenda L. Martinez, City Clerk

APPROVED AS TO FORM:

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Loren Combs, City Attorney