

**ORDINANCE NO. 10-943**

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**AN ORDINANCE OF THE CITY OF BLACK DIAMOND, WASHINGTON, UPDATING THE TECHNICAL CODES; REPEALING CHAPTERS 15.04, 15.10, 15.12, 15.16, 15.18, 15.20 AND 15.36 OF THE BLACK DIAMOND MUNICIPAL CODE; AMENDING CHAPTER 15.28 OF THE BLACK DIAMOND MUNICIPAL CODE; RE-ENACTING CHAPTER 15.04 OF THE BLACK DIAMOND MUNICIPAL CODE AS THE TECHNICAL CODES OF THE CITY; CONFORMING THE TECHNICAL CODES TO THE STATE BUILDING CODE; PROVIDING FOR THE ADMINISTRATION AND ENFORCEMENT OF THE TECHNICAL CODES; PROVIDING FOR APPEALS TO BE HEARD BY THE HEARING EXAMINER; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE**

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WHEREAS, Chapter 19.27 of the Revised Code of Washington establishes the state building code (the "State Building Code") to promote the health, safety and welfare of the occupants or users of buildings and structures and the general public throughout the State; and

WHEREAS, the State Building Code generally consists of the rules adopted by the State Building Code Council (the "State Council") establishing standards for making buildings and facilities accessible to and usable by the physically disabled or elderly persons, and those provisions of the International Building Code, the International Residential Code, the International Mechanical Code, the International Fire Code, and the Uniform Plumbing Code and Uniform Plumbing Standards, that are adopted from time to time by the State Council; and

WHEREAS, the State Building Code is enforced by all cities and counties in the State of Washington, including the City of Black Diamond, with the exception that cities and counties may adopt amendments to the State Building Code pursuant to the provisions of Chapter 19.27 RCW and Title 51 WAC; and

WHEREAS, Chapter 19.27A RCW establishes the Washington State Energy Code for Residential Buildings as the maximum and minimum energy code for residential buildings in each city and town, and the Washington State Energy Code for Nonresidential Buildings as the

minimum energy code for nonresidential buildings, with each such code to be enforced by each city and county; and

WHEREAS, in November 2009, the State Council completed adoption of the 2009 International Building, Residential, Mechanical and Fire Codes, the 2009 Uniform Plumbing Code, and the 2009 Washington State Energy Code, which codes, with state amendments, will be effective on or after July 1, 2010; and

WHEREAS, the State Council has repealed the Washington State Ventilation and Indoor Air Quality Code has been repealed and is now located in the IRC, the IMC and the IBC as appropriate; and

WHEREAS, the State Council has repealed the Washington State Historic Building Code which has been replaced by the International Existing Buildings Code, as adopted and amended by WAC 51-50-480000; and

WHEREAS, the Black Diamond Municipal Code currently makes reference to the prior editions of the national model codes and to the energy codes and further makes reference to the ventilation and indoor air quality code and the historic building code; and

WHEREAS, the enforcement provisions for the technical codes need to be amended to make reference to the new code enforcement provisions adopted by the City in April of 2009 pursuant to Black Diamond Municipal Ordinance No. 898; and

WHEREAS, the existing provisions for appeal of interpretation or application of the technical codes to the Board of Appeals should be amended to provide for such appeals to be made before the Hearing Examiner pursuant to Section 2.30 BDMC; and

WHEREAS, the City Council finds that it is in the public interest to amend Title 15 of the Black Diamond Municipal Code to update the technical codes to conform to the State Building Code and adopted national codes and standards, to provide for the administration and enforcement of the technical codes, and to provide for appeals to be heard by the hearing examiner;

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

Section 1. Repeal of Chapter 15.04 BDMC (Technical Codes Adopted), Chapter 15.10 (Additional Fire Protection Requirements), Chapter 15.12 BDMC (Uniform Administrative Code Adopted), Chapter 15.16 BDMC (Energy Code Adopted), Chapter 15.18 BDMC (Ventilation and Indoor Air Quality Code), Chapter 15.20 (Setback and Lot Lines) and 15.36 (Historic Building Code). Chapters 15.04, 15.10, 15.12, 15.16, 15.18, 15.20 and 15.36 of the Black Diamond Municipal Code are hereby repealed in their entirety.

Section 2. Re-enactment of Chapter 15.04 (Technical Codes). Chapter 15.04 of the Black Diamond Municipal Code is hereby re-enacted as Chapter 15.04, Technical Codes Adopted, consisting of 25 sections, and reading as follows:

**15.04.010 CHAPTER SCOPE.** This chapter establishes the administrative, organizational, and enforcement rules and regulations for the adopted technical codes as amended pursuant to this Chapter.

**15.04.020 PURPOSE.**

The State Legislature has established the State Building Code applicable throughout all cities and counties in the State of Washington for the purpose of promoting the health, safety, and welfare of the occupants or users of buildings and structures and the general public. Accordingly, this Chapter is designed to effectuate the following purposes, objectives, and standards of the State Building Code:

- A. To require minimum performance standards and requirements for construction and construction materials, consistent with accepted standards of engineering, fire and life safety;
- B. To require standards and requirements in terms of performance and nationally accepted standards;
- C. To permit the use of modern technical methods, devices and improvements;
- D. To eliminate restrictive, obsolete, conflicting, duplicating and unnecessary regulations and requirements which could unnecessarily increase construction costs or retard the use of new materials and methods of installation or provide unwarranted preferential treatment to types or classes of materials or products or methods of construction;
- E. To provide for standards and specifications for making buildings and facilities accessible to and usable by physically disabled persons and
- F. To consolidate within each authorized enforcement jurisdiction, the administration and enforcement of building codes.

**15.04.030 STATE BUILDING CODE ADOPTED.**

The State Building Code is made a part hereof, as though fully set forth in this Chapter, and is hereby adopted, as amended herein, as the City of Black Diamond Building Code.

**15.04.040 DEFINITIONS.**

Use of Words and Phrases. As used in this Chapter 15.04 BDMC, unless the context or subject matter clearly requires otherwise, the following words or phrases defined in this section shall have the indicated meanings:

“Building Code” or “City of Black Diamond Building Code” shall mean and refer to the State Building Code as adopted herein and as amended pursuant to the provisions of this Chapter 15.04 BDMC.

“Buildings and Construction Code” shall mean and refer to the International Building Code, as amended pursuant to the provisions of this Chapter 15.04 BDMC.

“Building service equipment” means and refers to the plumbing, mechanical and electrical equipment including piping, wiring, fixtures, and other accessories which provide sanitation, lighting, heating, ventilation, cooling, refrigeration, firefighting, and transportation facilities essential to the occupancy of the building or structure for its designated use.

“BDMC” means the Black Diamond Municipal Code.

“Existing building” means a building erected prior to the adoption of this code, or one for which a legal building permit has been issued and approved.

“Fire Code” shall mean and refer to the International Fire Code, as amended pursuant to the provisions of this Chapter 15.04 BDMC.

“International Building Code” shall mean and refer to those portions of the International Building Code, published by the International Code Council, Inc., as adopted and amended from time to time and made a part of the State Building Code by the Washington State Building Code Council pursuant to Chapters 19.27 and 70.92 of the Revised Code of Washington and Title 51 of the Washington Administrative Code.

“International Existing Building Code” shall mean and refer to the International Existing Building Code, published by the International Code Council, Inc., as adopted and amended from time to time by the Washington State Building Code

Council pursuant to Chapters 19.27 and 70.92 of the Revised Code of Washington and Title 51 of the Washington Administrative Code.

“International Fire Code” shall mean and refer to those portions of the International Fire Code, published by the International Code Council, Inc., as adopted and amended from time to time and made a part of the State Building Code by the Washington State Building Code Council pursuant to Chapters 19.27 and 70.92 of the Revised Code of Washington and Title 51 of the Washington Administrative Code.

“International Fuel Gas Code and the National Fuel Gas Code” shall mean and refer to those portions of the International Fuel Gas Code and the National Fuel Gas Code, published by the International Code Council, Inc., that are made a part of the International Mechanical Code, and as are adopted and amended from time to time and made a part of the State Building Code by the Washington State Building Code Council pursuant to Chapters 19.27 and 70.92 of the Revised Code of Washington and Title 51 of the Washington Administrative Code.

“International Mechanical Code” shall mean and refer to those portions of the International Mechanical Code, published by the International Code Council, Inc., as adopted and amended from time to time and made a part of the State Building Code by the Washington State Building Code Council pursuant to Chapters 19.27 and 70.92 of the Revised Code of Washington and Title 51 of the Washington Administrative Code.

“International Property Maintenance Code” shall mean and refer to International Property Maintenance Code, published by the International Code Council, Inc., as adopted pursuant to Section 101.4.5 of the International Building Code.

“International Residential Code” shall mean and refer to those portions of the International Residential Code, published by the International Code Council, Inc., as adopted and amended from time to time and made a part of the State Building Code by the Washington State Building Code Council pursuant to Chapters 19.27 and 70.92 of the Revised Code of Washington and Title 51 of the Washington Administrative Code.

“Mechanical Code” shall mean and refer to the International Mechanical Code, as amended pursuant to the provisions of this Chapter 15.04 BDMC.

“Mobile home” or “manufactured home” as defined by RCW 46.04.302 means a structure, designed and constructed to be transportable in one or more sections, is built on a permanent chassis, and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities that include plumbing, heating, and electrical systems contained therein.

“Modular home” as defined by RCW 46.04.303 means a factory-assembled structure designed primarily for use as a dwelling when connected to the required utilities that include plumbing, heating, and electrical systems contained therein, does not contain its own running gear, and is mounted on a permanent foundation. A modular home does not include a mobile home or manufactured home.

“Occupancy” means the purpose for which a building, or part thereof, is used or intended to be used.

“Person” shall mean and refer to any individual, corporation, partnership, association, joint-stock-company, limited liability company, political subdivision, public corporation, taxing districts, trust, or any other legal entity.

“Plumbing Code and Plumbing Code Standards” shall mean and refer to the Uniform Plumbing Code and Uniform Plumbing Code Standards, as amended pursuant to the provisions of this Chapter 15.04 BDMC.

“Residential Code” shall mean and refer to the International Residential Code, as amended pursuant to the provisions of this Chapter 15.04 BDMC.

“Shall” or “will” as used in this chapter, is mandatory.

“State Building Code” shall mean and consist of the following national model codes and the following standards, as such model codes and standards are adopted and amended from time to time by the Washington State Building Code Council pursuant to Chapters 19.27 and 70.92 of the Revised Code of Washington and Title 51 of the Washington Administrative Code:

A. The International Building Code, published by the International Code Council, Inc.;

B. The International Residential Code, published by the International Code Council, Inc.;

C. The International Mechanical Code, published by the International Code Council, Inc., including the International Fuel Gas Code and the National Fuel Gas Code, published by the International Code Council, Inc., except that the standards for liquified petroleum gas installations shall be NFPA 58 (Storage and Handling of Liquified Petroleum Gases) and ANSI Z223.1/NFPA 54 (National Fuel Gas Code);

D. The International Fire Code, published by the International Code Council, Inc., including Section 503 Fire Apparatus Access Roads, including the Appendices Chapters B, C and D, and those standards of the National Fire Protection Association specifically referenced in the

International Fire Code: PROVIDED that, notwithstanding any wording in this code, participants in religious ceremonies shall not be precluded from carrying hand-held candles;

E. Except as provided in RCW 19.27.170, the Uniform Plumbing Code and Uniform Plumbing Code Standards, published by the International Association of Plumbing and Mechanical Officials: PROVIDED that, any provisions of the Uniform Plumbing Code and Uniform Plumbing Code Standards affecting sewers or fuel gas piping are not adopted; and

F. The rules adopted by the council establishing standards for making buildings and facilities accessible to and usable by the physically disabled or elderly persons as provided in RCW 70.92.100 through 70.92.160, as now or hereafter amended.

All amendments to the State Building Code adopted by the Washington State Building Council from time to time are hereby, upon the effective date of such amendments, incorporated in this Chapter as though fully set forth herein. In the event that any provisions of the State Building Code are renumbered, any reference in this Chapter to such provision shall refer to such provision as renumbered.

“State Energy Code” shall mean and refer to the Washington State Energy Code as set forth at Chapter 51.11 of the Washington Administrative Code, including the Washington State Residential Energy Code and the Washington State Nonresidential Energy Code, and all amendments thereto as adopted from time to time.

“Technical codes” shall mean and refer to the national codes, standards and appendices incorporated as part of the State Building Code, including without limitation, the International Property Maintenance Code, all as amended pursuant to the provisions of this Chapter 15.04 BDMC, together with the International Existing Building Code and the State Energy Code, all as amended pursuant to the provisions of this Chapter 15.04 BDMC.

“Used mobile home” means a mobile home, which has been previously sold at retail and has been subjected to tax under chapter 82.08 RCW, or which has been previously used and has been subjected to tax under chapter 82.12 RCW, and which has substantially lost its identity as a mobile unit at the time of sale by virtue of its being fixed in location upon land owned or leased by the owner of the mobile home and placed on a foundation (posts or blocks) with fixed pipe connections with sewer, water, and other utilities.

“Uniform Plumbing Code and Uniform Plumbing Code Standards” shall mean and refer to those portions of the Uniform Plumbing Code and Uniform Plumbing

Code Standards, published by the International Association of Plumbing and Mechanical Officials, as adopted and amended from time to time and made a part of the State Building Code by the Washington State Building Code Council pursuant to Chapters 19.27 and 70.92 of the Revised Code of Washington and Title 51 of the Washington Administrative Code.

**15.04.050 ORDER OF PRECEDENCE.**

A. Except as provided in subsection (B) of this section, conflicts within the technical codes, standards and appendices shall be resolved in accordance with the provisions of Chapters 19.27 and 19.27A of the Revised Code of Washington and Title 51 of the Washington Administrative Code.

B. In the event of a conflict between the appeal and enforcement provisions contained in the Technical Codes and the appeal and enforcement provisions set forth at sections 15.04.230 and 15.04.240 BDMC, the provisions set forth at sections 15.04.230 and 15.04.240 BDMC shall control to the extent of the conflict.

**15.04.060 APPENDICES.** The appendices to the national codes are not adopted as part of the Building Code unless specifically made a part of the State Building Code or specifically adopted pursuant to the provisions of this Chapter 15.04 BDMC.

**15.04.070 OTHER LAWS.** The provisions of Chapter 15.04 BDMC shall not be deemed to nullify any provisions of local, state or federal law.

**15.04.080 APPLICATION OF REFERENCES.** References to chapter or section numbers, or to provisions not specifically identified by number, shall be construed to refer to such chapter, section, or provision of this title.

**15.04.090 APPLICABILITY.** Except as otherwise provided herein, this Chapter shall apply to all:

A. New construction and additions; and

B. The entire building when all additions, alterations, remodels, or repairs to existing structures in which the area of the additions, alterations, or repairs exceeds more than 50 percent of the habitable area of the existing structure. In the case of a series of additions, alterations, or repair projects, this title shall become effective at the point where in any three-year period the cumulative area of additions, alterations, or repairs exceeds 50 percent of the area of the structure at the time such additions, alterations, or repairs are commenced and shall apply to the entire building.



**15.04.100 BUILDING DIVISION ESTABLISHED.** There is established for the City, the building division that shall be under the supervision and control of the city administrator or his/her designee.

**15.04.110 BUILDING OFFICIAL DESIGNATED.** The building official, as defined in Section 104 of the International Building Code, R104 of the International Residential Code, and Section 104 of the International Mechanical Code, shall be appointed by the City Administrator, and in the absence of such appointment, shall be the City Administrator.

**15.04.120 ADMINISTRATION AND ENFORCEMENT.** The building official is hereby authorized and directed to enforce the provisions of the technical codes, with the exception of the fire code. The building official, with the exception of the fire code, shall have the authority to render interpretations of the technical codes and to adopt policies and procedures in order to clarify the application of their provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of this Chapter. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in the technical codes. Except as otherwise provided in this Chapter, the provisions of this Chapter shall be administered and enforced by the building official of the city.

**15.04.130 FIRE CHIEF AND FIRE MARSHAL DESIGNATED.** The Chief of Fire District No. 44, or the District's successor, shall be deemed to be the "Chief" or "Chief of the Fire Department" or "Fire Code Official" for the purposes of enforcing and administering all provisions of the fire code. The Fire Code Official shall have the authority to render interpretations of the fire code and to adopt policies and procedures in order to clarify the application of their provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of this Chapter. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in the technical codes. Except as otherwise provided in this Chapter, the provisions of fire code shall be administered and enforced by the fire code official; provided that, the Building Official shall also have authority to enforce the fire code.

**15.04.140 FEES.** Except as otherwise provided in this Chapter, the fee for any permit issued by the city under the authority of this Chapter shall be as established by the City Council. A permit shall not be valid until the fees prescribed by law have been paid, nor shall an amendment to a permit be released until the additional fee, if any, has been paid.

**15.04.150 LIABILITY.** This Chapter is not intended, nor shall this Chapter shall be construed, to relieve or lessen the responsibility of a person owning, building, altering, constructing, or moving a building or structure as defined in this Chapter; nor shall the City or an agent thereof be held as assuming such

responsibility or liability by reason of inspection authorized in this Chapter, by reason of a certificate of inspection issued by the City or any of its agents, or by reason of any duty imposed under this Chapter. No provision of or any 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. The building official, or employee charged with the enforcement of this code, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by this Chapter or other pertinent law or ordinance, shall not thereby be rendered liable personally and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission in the discharge of official duties. Any suit instituted against an officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this Chapter shall be defended by a legal representative of the City until the final termination of the proceedings. This Chapter is intended for the purpose of promoting the health, safety, and welfare of the general public further not intended to create a duty to any person or individual.

**15.08.160: EXPIRATION OF PERMIT.** Notwithstanding any provision to contrary in the technical codes, every permit issued pursuant to this Chapter shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended, abandoned or not substantially completed 2 years after the date the permit is issued. The building official is authorized to grant, in writing, a one-time extension of time, for a period not more than 2 years. The extension shall be requested in writing and justifiable cause demonstrated.

**15.08.170 SUSPENSION OR REVOCATION.** The building official is authorized to suspend or revoke a permit issued under the provisions of this Chapter wherever the permit is issued in error or on the basis of incorrect, inaccurate or incomplete information, or in violation of any ordinance or regulation or any of the provisions of this chapter.

**15.08.180 AMENDMENTS TO STATE BUILDING CODE.** The State Building Code is hereby amended as follows:

A. International Building Code:

- i. Group occupancies. The International Building Code is amended by the adoption of the following occupancy groups:

Occupancy Title	Description	
Assembly	A	Social, recreational or civic gatherings of 50 or more persons
Business	B	Office, professional, social activities and related records. Education facilities past 12th grade
Educational	E	day care for children older than 2.5 years with more
Factory	F	Manufacturing and industrial processes, except those that are hazardous
Hazardous	H	High potential for health or physical safety hazards. Explosives, flammables, corrosives, toxic materials
Institutional	I	Facilities where occupants cannot fully care for themselves
Mercantile	M	Mercantile sales including stocking of goods
Residential	R	People live and sleep in an unsupervised setting
Storage	S	Storage
Utility	U	Agricultural buildings, aircraft hangers, barns, greenhouses, livestock shelters, tanks and towers

B. The International Property Maintenance Code.

i. Notwithstanding any provision in the International Property Maintenance Code to the contrary, all appeals shall be governed by Section 15.04.230 BDMC.

ii. The following sections of the International Property Maintenance Code, or the corresponding section of any updated or amended version of the International Property Maintenance Code, are removed in their entirety and are not adopted:

111	Means of Appeal
302.9	Defacement of property
304.2	Protective treatment
304.13.2	Openable windows
404.4.1	Room area
404.5	Overcrowding
404.6	Efficiency unit
604	Electrical facilities

iii. That portion of Section 103.5 of the International Property Maintenance Code, or the corresponding section of any updated or amended version of the International Property Maintenance Code, that is left for the decision of the local jurisdiction shall read as follows:

The fees for activities and services performed by the department in carrying out its responsibilities under this code shall be set by the City Council.

iv. That portion of Section 302.4 of the International Property Maintenance Code, or the corresponding section of any updated or amended version of the International Property Maintenance Code, that is left for the decision of the local jurisdiction shall read as follows:

All premises and exterior property shall be maintained free from weeds or plant growth in excess of twelve (12") inches. All noxious weeds shall be prohibited. Weeds shall be defined as all grasses, annual plants and vegetation, other than trees or shrubs, provided; however, this term shall not include cultivated flowers and gardens.

v. The last sentence of Section 304.9 of the International Property Maintenance Code, or the corresponding section of any updated or amended version of the International Property Maintenance Code, is not adopted so that Section 304.9 shall read only:

All overhang extensions, including but not limited to canopies, marquees, signs, metal awnings, fire escapes, standpipes and exhaust ducts shall be maintained in good repair and be properly anchored so as to be kept in a sound condition.

C. The International Fire Code.

- i. Section 504.3 of the International Fire code section 504.3 is amended as follows:

504.3 Stairway access to roof. New buildings Three or more stories in height, except those with a roof slope greater than four units vertical and 12 units in horizontal (33.3 percent slope), shall be provided with a stairway to the roof. Stairway access to the roof shall be provided in accordance with Section 1009.12. Such stairway shall be marked at the street and floor levels with a sign indicating that the stairway continues to the roof. Where roofs are used for roof gardens or for other purposes, stairways shall be provided as required for such occupancy classification.

- ii. Section 903.2 of the International Fire code is amended as follows:

903.2 Where required. Approved automatic sprinkler systems in new buildings and structures shall be provided in the locations described in this section.

Exception. Unless specifically required by another code section all non-residential occupancies shall be provided in buildings with a fire area in excess of 3500 square feet exclusive of fire walls.

**15.04.190 ENERGY CODE ADOPTED.** The Washington State Energy Code, as amended in this Chapter, is hereby adopted as the Energy Code of the City of Black Diamond, and made a part hereof as though fully set forth in this Chapter. All amendments to the Washington State Energy Code are hereby, upon the effective date of such amendments, incorporated in this Chapter as though fully set forth herein. In the event that any provisions of the Washington State Energy Code are renumbered, any reference in this Chapter to such provision shall refer to such provision as renumbered.

**15.04.200 INTERNATIONAL EXISTING BUILDING CODE.** The International Existing Building Code, as amended in this Chapter, is hereby adopted as the Existing Building Code of the City of Black Diamond, and made a part hereof as though fully set forth in this Chapter. All amendments to the Washington State Existing Building Code are hereby, upon the effective date of such amendments, incorporated in this Chapter as though fully set forth herein. In the event that any provisions of the Washington State Existing Building Code are renumbered, any reference in this Chapter to such provision shall refer to such provision as renumbered.

**15.04.210 MANUFACTURED HOUSING.** All manufactured homes shall be designed to support the local snow load of 25 pounds per square foot of ground snow load.

**15.04.220 ASSURANCE DEVICE FOR BUILDING PERMIT – REQUIREMENTS.** Before issuing any permit pursuant to this Chapter the City may require the applicant to execute and file with the city a cash bond or other security in a form approved by the city administrator in such reasonable sum and with the securities as the building official may specify, conditioned that the applicant will pay any and all damages that may be recovered against the city by any person on account of injury to persons or property occasioned by or in any manner resulting from the issuance of the permit or by reason of any act or thing done pursuant thereto, or from the occupancy or disturbance of any street or sidewalk in the city and also to save, keep, and defend the city free from all such damages and costs as may be incurred in defending any such claim, and/or further conditioned that the applicant shall pay to the city the cost of repairing any and all damage which may be done by the applicant or his/her agents to the streets, utilities, or property of the city during or pursuant to the work covered by such permit.

**15.04.230 APPEALS.**

A. Except as otherwise provided in this Chapter, a person aggrieved by a decision or interpretation of the building official or fire code official made pursuant to this Chapter, or a decision or interpretation of the City Administrator pursuant to Chapter 15.28 BDMC, shall be entitled to a review of such decision or interpretation by appeal to the hearing examiner in accordance with the provisions of Chapter 2.30 BDMC (Hearing Examiner). Such appeal shall be in writing and must be filed with the city clerk within 10 days of such decision, in accordance with Chapter 2.30 BDMC.

B. An application for appeal shall be based on a claim that this chapter or the technical codes have been incorrectly interpreted, that the provisions of this chapter or the technical codes do not apply or that an equally good or better form of construction, method of protection or safety is proposed. The hearing examiner shall have no authority relative to interpretation of the administrative provisions of this Chapter nor shall the hearing examiner be empowered to waive requirements of this Chapter. The appellant shall bear the burden of proof by substantial evidence on the record.

C. All references to “board of appeals” in any of the technical codes shall hereafter mean and refer to the hearing examiner.

D. Standing. Standing to bring an appeal under this Chapter is limited to the following persons:

i. The applicant and the owner of property to which the permit decision is directed.

ii. Another person aggrieved or adversely affected by the order, determination, or decision, or who would be aggrieved or adversely affected by a reversal or modification of the order, determination, or decision. A person is aggrieved or adversely affected within the meaning of this section only when all of the following conditions are present:

a. The order, determination, or decision has prejudiced or is likely to prejudice that person;

b. A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the order, determination, or decision; and

c. The appellant has exhausted his or her administrative remedies to the extent required by law.

E. The appeal shall contain a clear reference to the matter being appealed and a statement of the specific elements of the building official’s or fire code official’s order, decision or determination disputed by the appellant.

F. The appeal will be an open record appeal hearing. The scope of the appeal is limited to the specific elements of the building official's or fire code official's order, decision or determination disputed by the appellant and the hearing examiner shall only consider comments, testimony and arguments on these specific elements.

#### **15.04.240 ENFORCEMENT; VIOLATIONS:**

The provisions of this Chapter shall constitute a regulation within the meaning of section 8.02.020 BDMC, a violation of which is subject to the code enforcement provisions and penalties set forth at Chapter 8.02 BDMC, as now or hereafter amended.

Section 3. Amendment of BDMC 15.28.050 (Exemptions). Section 15.28.050 of the Black Diamond Municipal Code is hereby amended (shown in legislative revisions marks) to read as follows:

A. On-site excavation or fill for a basement, building footings, retaining wall, parking lot or other structure for which there has been issued a valid building permit as set forth in ~~Chapter 33 and/or Appendix Chapter 33, 1994 Edition of the Uniform Building Code Appendix J of the International Building Code;~~ except that neither a fill made with the material from such excavation nor an excavation having an unsupported height of greater than five feet after the completion of said structure, shall be exempt from the provisions of this chapter;

Section 4. Amendment of BDMC 15.28.210 (Appeals). Section 15.28.210 of the Black Diamond Municipal Code is hereby amended (shown in legislative revisions marks) to read as follows:

#### 15.28.210 Appeals

A. Any decision of the city administrator with respect to the enforcement or administration of this chapter shall be final unless timely appealed pursuant to the provisions of Section 15.04.230 BDMC. ~~to the city council 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 within fifteen days of the date of the decision being appealed. Upon receipt of a timely written appeal, the city clerk shall advise the city council of the pendency of said appeal.~~

~~B. At its next regularly scheduled meeting, the city council shall set a time and place for the public hearing to consider said appeal. Written notice of said hearing shall be given to all property owners of record within a three hundred foot radius of the site's external boundaries by mailing the same by first class mail at least ten days prior to the hearing. In addition, notice shall be posted on the nearest public~~



~~street from the site at least ten days prior to the hearing. Within twenty-one days after the hearing, the city council shall issue its written findings, conclusions and decision affirming, reversing or modifying the city administrator's decision. A copy of the city council's decision shall be promptly mailed to the aggrieved person appealing the decision.~~

~~C. Any person who meets the standing requirements of RCW 36.70C.060, may appeal a decision of the city council under this chapter to the King County Superior Court; provided, that said appeal must be filed with the King County Superior Court within twenty-one days of the date of the decision being appealed. Said appeal shall be governed by the Land Use Petition Act, RCW, Chapter 36.70C. Any decision of the city council not so appealed shall be deemed final and conclusive.~~

Section 5. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 6. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force at 12:01 a.m. on July 1, 2010 or five (5) days after the date of publication, whichever is the later.

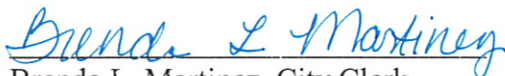
**ADOPTED** BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 17 DAY OF June, 2010.

CITY OF BLACK DIAMOND



Rebecca Olness, Mayor

ATTEST/AUTHENTICATED:



Brenda L. Martinez, City Clerk

Approved as to form:

\_\_\_\_\_  
Chris D. Bacha,  
Kenyon Disend, PLLC  
City Attorney

Filed with the City Clerk:  
Passed by the City Council:  
Ordinance No. 10-943  
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