

ORDINANCE NO. 10- 945

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, AMENDING CHAPTER 14.04 OF THE MUNICIPAL CODE REGARDING STORMWATER REGULATIONS

WHEREAS, BDMC Title 14 contains the City's stormwater regulations; and

WHEREAS, BDMC Chapter 14.04 contains the City's stormwater management, drainage design, and maintenance and inspection regulations; and

WHEREAS, BDMC Chapter 14.04 was adopted in compliance with requirements of the National Pollution Discharge Elimination System Western Washington Phase II Municipal Stormwater Permit ("the Permit"); and

WHEREAS, BDMC Section 14.04.020 adopted the February 2005 Edition of the Stormwater Management Manual for Western Washington promulgated by the Washington Department of Ecology, and said Manual in combination with BDMC Chapter 14.04 already specifies inspection and maintenance obligations and City enforcement authority; and

WHEREAS, notwithstanding the City's adoption of the BDMC Chapter 14.04 and the 2005 Stormwater Management Manual for Western Washington, it is in the City's best interest to further clarify certain maintenance and inspection obligations of property owners with respect to stormwater drainage, treatment and conveyance facilities, and potential enforcement options available in the event of noncompliance with the requirements of BDMC Chapter 14.04;

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

Section 1. Section 14.04.130 Amended. 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, all stormwater drainage, conveyance and treatment facilities shall be maintained by the individual lot owners and/or the property owners' association unless the facilities are dedicated to and accepted by the City of Black Diamond as part of final plat approval. †The maintenance duties shall be in accordance with the conditions and requirements of final plat approval, and shall at a minimum include those maintenance obligations as set forth in: (1) the operation and maintenance manual approved for the project's storm drainage, treatment and conveyance facilities; and (2) the SWMMWW, including but not limited to the BMPs for

Maintenance of Storm Drainage and Treatment Systems set forth in Volume IV, Chapter 2, and the Maintenance Standards for Drainage Facilities set forth in Volume 5, Chapter 4 and of the SWMMWW. ~~but~~ Further, the property owner's association shall in all cases have principal responsibility for source control for practices of its members that may impact quality of runoff.

B. For all projects other than ~~except~~ residential subdivisions, the project proponent or successors thereto shall operate and maintain stormwater drainage facilities in compliance with and implement the requirements of the approved operation and maintenance manual for the project's storm drainage, treatment and conveyance facilities; and (2) the SWMMWW, including but not limited to the BMPs for Maintenance of Storm Drainage and Treatment Systems set forth in Volume IV, Chapter 2, and the Maintenance Standards for Drainage Facilities set forth in Volume 5, Chapter 4 and of the SWMMWW.

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.

E. Unless there are circumstances beyond the control of the person responsible for maintenance under this section, maintenance identified as necessary as a result of any inspections required by the SWMMWW or Section 14.04.365 of this Code shall be performed within 1 year of the date of said inspection, for typical maintenance of facilities other than catch basins, in which case maintenance shall be performed within six (6) months. Maintenance that requires capital construction of less than \$25,000 shall be performed within two (2) years of the date of the inspection. "Circumstances beyond the control" include denial or delay of necessary permits or approvals, or unexpected reallocation of maintenance staff to perform emergency work. A person responsible for maintenance who claims the existence of circumstances beyond their control must document each such instance in writing to the director, and explain why circumstances were beyond their control.

Section 2. Section 14.04.130 Amended. Section 14.04.130 of the Black Diamond Municipal Code is hereby amended to read as follows:

14.04.365 Inspections, right of entry, access.

A. 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.

B. Persons responsible for maintenance pursuant to Section 14.04.130 shall inspect storm water drainage, treatment and conveyance facilities as required by the City of Black Diamond Engineering Design and Construction Standards and the SWMMWW. Further, such facilities shall be inspected at a minimum annually, unless a different inspection schedule is approved by the director in writing, based on maintenance records collected over double the length of the proposed maintenance frequency, or upon actual inspection and maintenance experience as certified in accordance with Section G19 of the Western Washington Phase II Municipal Stormwater Permit. Records documenting the results of inspections required by this section shall be provided to the director within thirty (30) days of the date of the inspection.

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

14.04.400 Enforcement and 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 14.04.170(B).

C. In addition to any other remedies set forth in this chapter or available at law, the city shall have the additional remedies set forth in this subsection for any violation of the provisions of this chapter. 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:

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

ii. 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.

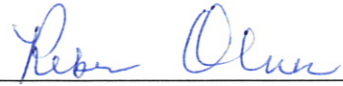
2. Civil Penalty. Any violation of the provisions of this chapter, or any violation of any notice of violation, cease and desist order or order stopping work issued pursuant to this section, shall subject the offender to a civil penalty of up to fifty dollars for each of the first five days that a violation exists and up to one hundred dollars 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 any applicable notice of violation, cease and desist order or order stopping work.

Section 4. 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 5. 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 15th day of July, 2010.

Passed by the City Council on the 15th day of July, 2010.



Mayor Rebecca Olness

ATTEST:



Brenda L. Martinez, City Clerk

APPROVED AS TO FORM:

Chris Bacha, City Attorney

Published: _____

Effective Date: _____