

ORDINANCE NO. 10-949

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, RELATING TO SEPA PROCESS AMENDMENTS AND SPECIFICALLY AMENDING BDMC SECTIONS 19.04.040, 19.04.180, AND 19.04.300; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, in June 2009, the City of Black Diamond adopted a new Zoning Code as Title 18 of the Black Diamond Municipal Code, which includes Chapter 18.08 concerning administrative procedures for various land use actions, including administration of the State Environmental Policy Act (SEPA); and

WHEREAS, Black Diamond Municipal Code Chapter 19.04 also contains provisions relating to the SEPA process; and

WHEREAS, it is preferable to have these procedural requirements located in one area of the Municipal Code; and

WHEREAS, the planning commission has recommended that BDMC Chapter 18.08 be amended to strike all references to the SEPA process, and that change is being considered concurrently with these proposed amendments; and

WHEREAS, the planning commission reviewed the proposed changes at public hearings held on August 10, 2010 and recommended that the amendments be adopted; and

WHEREAS, the amendments were forwarded to the Washington State Department of Commerce for review as required under RCW 36.70A.106, were granted expedited review on August 9, 2010, and are thus eligible for adoption; and

WHEREAS, a Determination of Nonsignificance for the proposed changes was issued on July 23, 2010; and

WHEREAS, the City Council held a public hearing on the proposed amendments on September 16, 2010;

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

Section 1. BDMC 19.04.040, Amended. Black Diamond Municipal Code Section 19.04.040 (Designation of responsible official) is hereby amended to read as follows:

19.04.040 Designation of responsible official.

A. For those proposals for which the city is a lead agency, the responsible official shall be the community development director or such other person as the mayor may designate in writing.

B. For those proposals for which the city is a lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS), and perform any other functions assigned to the lead agency or responsible official by those sections of the SEPA rules that have been adopted by reference.

Section 2. BDMC 19.04.180, Amended. Black Diamond Municipal Code Section 19.04.180 (Public notice) is hereby amended to read as follows:

19.04.180 Public notice.

A. Whenever public notice is required, the city shall follow the procedures set forth in this section.

B. Public notice will be given in the following situations:

1. When the city issues the following determinations of nonsignificance (DNS):
 - a. DNS involving another agency with jurisdiction;
 - b. DNS involving the demolition of any structure or facility not exempted by WAC 197-11-800(2)(f) or 197-11-880;
 - c. DNS involving the issuance of a clearing or grading permit not exempted by WAC 197-11-800 through 197-11-890;
 - d. DNS issued following a request for early notice pursuant to WAC 197-11-350(2);
 - e. Mitigated DNS issued pursuant to WAC 197-11-350(3); or
 - f. DNS issued following the withdrawal of a DS pursuant to WAC 197-11-360(4);

2. When the city issues a determination of significance to commence scoping;
3. When a draft EIS (DEIS) is available for public comment;
4. Whenever the city holds a public hearing pursuant to WAC 197-11-535; and
5. Whenever the responsible official determines that public notice is required.

C. The city shall give public notice by using all of the following methods set forth in Subsection C.1- 4 below:

1. Posting the property, for site-specific proposals;
2. Publishing notice in the official city newspaper and, optionally, a newspaper of general circulation in the area;
3. Mailing notice to owners of property within 300 ft. of the proposal or a greater distance if needed to notify a minimum of twenty (20) of the nearest property owners; and to other known interested individuals; and
4. Mailing notice to other agencies with jurisdiction and affected Indian tribes;
5. The City may, in addition to the foregoing, use any other method reasonably calculated to inform the public and other agencies or required by statute or ordinance, including posting notice on the city's website.

D. Notice of public hearings shall be published no later than ten days before the hearing in the city's official newspaper and, optionally, a newspaper of general circulation in the city.

E. The city may require an applicant to compensate the city for the costs of compliance with the public notice requirements for the applicant's proposal or provide services and materials to assist.

Section 3. BDMC 19.04.300, Amended. Black Diamond Municipal Code Section 19.04.300 (Fees) is hereby amended to read as follows:

19.04.300 Fees.

The city shall require the following fees for its activities in accordance with the provisions of this chapter:

A. Threshold Determination. For every environmental checklist the city will review when it is lead agency, the city shall collect a fee as established in the city's fee schedule from the proponent of the proposal prior to undertaking the threshold determination. The time periods provided by this chapter for making a threshold determination shall not begin to run until payment of fees. When the city assists the applicant or completes the environmental checklist at the applicant's request or under Section 19.04.120 of this chapter, an additional fee, as established in the fee schedule, shall be collected.

B. Environmental Impact Statement.

1. When the city is the lead agency for a proposal requiring an EIS and the responsible official determines that the EIS shall be prepared by employees of the city, the city may charge and collect a reasonable fee from any applicant to cover costs incurred, including overhead, in preparing the EIS. The responsible official shall advise the applicant of the projected costs for the EIS prior to actual preparation.
2. The responsible official may determine that the city will contract directly with a consultant for preparation of an EIS, or a portion of the EIS, for activities initiated by some persons or entity other than the city and may bill such costs and expenses (plus an administrative fee) directly to the applicant. Such consultants shall be selected by the city.
3. The applicant shall pay at least 50% of the total projected amount to prepare the EIS to the city prior to work commencing. Additional funds shall be provided when so requested by the city. The city will refund the excess, if any, at the completion of the EIS. If the city's costs exceed the projected costs, the applicant shall immediately pay the excess. If a proposal is modified so that an EIS is no longer required, the responsible official shall refund any fees collected under subdivisions 1 and 2 of this subsection which remain after incurred costs, including overhead, are paid.

C. The city may collect a reasonable administrative fee from an applicant to cover the cost of meeting the public notice requirements of this chapter and its overhead expenses for overseeing preparation of the EIS.

D. The city may charge any person for copies of any document prepared under this chapter, and for mailing the document, in a manner provided by RCW Chapter 42.17.


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 7th day of October, 2010.

Passed by the City Council on the 7th day of October, 2010.

CITY OF BLACK DIAMOND



Mayor Rebecca Olness

ATTEST:



Brenda L. Martinez, City Clerk

APPROVED AS TO FORM:

Chris Bacha, City Attorney

Published: 10-12-2010
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