

**CITY OF BLACK DIAMOND
WASHINGTON**

ORDINANCE NO. 12-979

**AN ORDINANCE OF THE CITY OF BLACK DIAMOND,
WASHINGTON, RELATING TO APPEALS OF
PRELIMINARY PLAT APPROVAL; AMENDING
SECTION 17.16.040 OF THE BLACK DIAMOND
MUNICIPAL CODE; CLARIFYING THAT A
PRELIMINARY PLAT APPROVAL BY THE HEARING
EXAMINER IS NOT SUBJECT TO ADMINISTRATIVE
APPEAL; PROVIDING FOR SEVERABILITY; AND
ESTABLISHING AN EFFECTIVE DATE**

WHEREAS, on June 18, 2009 the City Council adopted Ordinance No. 09-909 to replace the majority of the City's then-existing zoning regulations and procedural requirements codified in Title 18 of the Black Diamond Municipal Code; and

WHEREAS, pursuant to Ordinance No. 09-909 approval of a preliminary plat was made a type – 3 decision; and

WHEREAS, a type – 3 decision is made by a Hearing Examiner following an open record public hearing and may only be appealed to the Superior Court; and

WHEREAS, BDMC 17.16.040 which pre-existed the adoption of Ordinance No. 09-909, provides for a closed record administrative appeal before the City Council, of the hearing examiner's decision on a preliminary plat application; and

WHEREAS, BDMC 17.16.040 is in conflict with the procedures for appeal of a decision on a preliminary plat application as set forth in Ordinance No. 09-909; and

WHEREAS, the planning commission conducted a public hearing commencing on June 12, 2012 and extending to July 10, 2012 and August 7, 2012, to review proposed amendments to BDMC Title 17 and Title 18 that would clarify that preliminary plat approval by the hearing examiner may be subject to administrative appeal before the City Council; and

WHEREAS, the planning commission recommended that the City Council not adopt the proposed amendments to BDMC Title 17 and Title 18 and that the City Council instead amend

BDMC Title 17 to eliminate the existing conflict and clarify that the preliminary plat approval by the hearing examiner is a final decision and subject to appeal only to Superior Court pursuant to the provisions of BDMC Chapter 18.08; and

WHEREAS, the City Council considered the recommendation of the Planning Commission at its regular meeting conducted on September 6, 2012 and determined that it would be in the best interest of the public to accept the recommendation of the planning commission as set forth above; and

WHEREAS, the City Council finds that it is in the best interest of the public health, safety and welfare to amend BDMC 17.16.40 as set forth herein to remove the conflict that has unintentionally been created regarding administrative appeals of preliminary plat approval decisions and to clarify and harmonize the process for such administrative appeals;

NOW, THEREFORE, the City Council of the City of Black Diamond, Washington, do ordain as follows:

Section 1. Amendment of BDMC 17.16.040 (Appeal from hearings examiner decision). Section 17.16.040 of the Black Diamond Municipal Code is hereby repealed in its entirety and is re-enacted to read as follows:

17.16.040 – Judicial Review.


The hearing examiner's decision on a preliminary plat application shall be the final administrative decision of the city. The decision of the hearing examiner may be subject to judicial review in accordance with BDMC 18.08.230 and Chapter 36.70C RCW.

Section 2. 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.

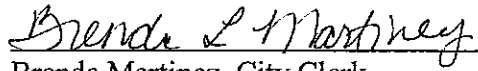
Section 3. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 20TH DAY OF SEPTEMBER, 2012.

CITY OF BLACK DIAMOND


Rebecca Olness, Mayor

ATTEST/AUTHENTICATED:


Brenda Martinez, City Clerk

Approved as to form:

Chris D. Bacha,
Kenyon Disend PLLC
City Attorney

Filed with the City Clerk: 9/21/2012
Passed by the City Council: 9/20/2012
Ordinance No. 12-979
Date of Publication: 9/28/2012
Effective Date: 10/3/2012