

**CITY OF BLACK DIAMOND
WASHINGTON**

ORDINANCE NO. 12-990

**AN ORDINANCE OF THE CITY OF BLACK
DIAMOND, KING COUNTY, WASHINGTON;
RELATING TO STORMWATER UTILITY RATES;
AMENDING SECTION 14.02.110 OF THE BLACK
DIAMOND MUNICIPAL CODE; IMPLEMENTING
A MONTHLY RATE INCREASE OF ONE DOLLAR
PER ERU IN 2013 AND ONE DOLLAR PER ERU IN
2014; PROVIDING FOR SEVERABILITY;
ESTABLISHING AN EFFECTIVE DATE**

WHEREAS, the City of Black Diamond is a municipal corporation operating under the laws of the state of Washington as a code city pursuant to Chapter 35A of the Revised Code of Washington; and

WHEREAS, as a code city, the legislative body of the City of Black Diamond is vested with all powers possible for a city or town to have under the Constitution of this state, and not specifically denied to code cities by law; and

WHEREAS, RCW Ch. 35.92 and Ch. 35.67 authorizes the City of Black Diamond to construct, condemn and purchase, acquire, add to, alter, maintain, and operate storm and surface water sewerage systems, and establish the rates therefore; and

WHEREAS, in 2008 the City contracted with PacWest Engineering to perform a stormwater utility rates study for the purpose of, (a) identifying current and projected stormwater utility maintenance, operation and capital costs and needs to ensure that the City can continuing providing adequate stormwater utility services throughout the City and meet its statutory and contractual obligations related thereto, and (b) identifying stormwater utility rates that will adequately fund such existing and projected costs; and

WHEREAS, PacWest worked closely with City staff to establish financial policies and arrive at rate and charge conclusions that meet forecasted utility financial obligations, achieve near term City goals, comply with legal requirements, and adhere to industry best practices; and

WHEREAS, PacWest in its 2008 Stormwater Utility Rate Study recommended monthly stormwater utility rates in the amount of \$13.00 per ERU for year 2009, \$13.60 for 2010, and \$14.20

for year 2011, in order to generate enough revenue to maintain a self-supporting and financially viable stormwater utility; and

WHEREAS, on November 6, 2008 the City Council of Black Diamond adopted Ordinance No. 08-872, creating a storm water utility and establishing rates and charges applicable thereto, which rates and charges were codified in Title 14 of the Black Diamond Municipal Code, and more specifically at BDMC 14.02.110 and were consistent with the recommendation set forth in the PacWest rate study; and

WHEREAS, although the City Council, in adopting Ordinance No. 08.872, found that the rate structure and rates were fair, just and non-discriminatory, the City Council in 2009 determined that the full amount of the recommended rates and rate increases would have a detrimental impact upon business in the City that were experiencing a hardship resulting from the long-term closure of the Green River Bridge and the severe economic recession; and

WHEREAS, on April 23, 2009, the City Council adopted Ordinance No. 09-901 which ordinance implemented a reduction in the monthly stormwater rates for 2009 from \$13.00 per ERU to \$10.00 per ERU, and implementing a monthly stormwater rate of \$11.50 per ERU for year 2010 and \$13.00 per ERU for 2011; and

WHEREAS, the current monthly stormwater utility rate of \$13.00 per ERU is less than the maximum rate per ERU of \$14.20 recommended by PacWest in the 2008 rate study for the year 2011; and

WHEREAS, the City Council has determined that the current monthly stormwater utility rates are insufficient to fund the on-going maintenance, operational and capital costs of the stormwater utility; and

WHEREAS, in addition, the stormwater utility operational costs will increase on January 1, 2013 and again on January 1, 2014 as a result of passage of an ordinance increasing stormwater utility taxes upon gross revenues from 6 percent to 12 percent on January 1 2013 and from 12 percent to 18 percent on January 1, 2014; and

WHEREAS, the increase in stormwater utility operational costs resulting from the above described utility tax increases was not contemplated or included within the rate calculations by PacWest, and

WHEREAS, City of Black Diamond Finance Director has determined that the additional unanticipated stormwater utility operational costs resulting from the tax increase can be funded through a monthly rate increase in year 2013 of seventy-seven cents per ERU and a monthly rate increase in year 2014 of seventy-seven cents per ERU; and

WHEREAS, the City Council desires to adjust the stormwater utility rates to take into account the additional operational costs resulting from the stormwater utility tax rate increase and to implement

a portion of the stormwater rate recommended pursuant to the Stormwater Utility Rate Study that has not been previously implemented;

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

Section 1. Amendment of BDMC 14.02.110 (Service Rate Charges). Section 14.02.110 of the Black Diamond Municipal Code is hereby amended (*amendments shown in legislative revision marks*) to read as follows:

14.02.110 - Service charge rates.

A. Service charges are hereby imposed on each parcel of real property within the city served by or to which is available for service the stormwater and surface water management utility.

B. The following service charge rate is hereby established for all parcels of real property in the city, subject to any credits as described in subsection (C), below:

~~1. For fiscal year 2009: The rate is amended from thirteen dollars to ten dollars per ERU per month, effective April 1, 2009; provided, customers will receive a credit from the city for the difference in cost for the months of January, February, and March 2009 between the original rate and the new rate.~~

~~2. For fiscal year 2010: Eleven dollars and fifty cents per ERU per month.~~

~~3. For fiscal year 2011: Thirteen (Fourteen) dollars per ERU per month.~~
Effective January 1, 2014, the service charge rate shall increase to fifteen dollars per ERU per month.

C. Credits. Where applicable, the following credits may be applied in calculating the service rate for a parcel of real property within the City of Black Diamond:

1. *Department of ecology permit credit.* Any customer within the City of Black Diamond that is required to obtain a general or individual wastewater permit from the Washington State Department of Ecology shall receive a credit, prorated monthly, in the amount paid each year for such permit toward the amount owed to the City of Black Diamond under this chapter. In order to qualify for this credit, the business must provide the city with a copy of the department of ecology permit and proof of payments along with a letter to the city utility clerk requesting the credit.

2. *Storm pond investment credit.* Any customer that is assessed a stormwater utility fee under Section 14.02.070.B.4 and that constructs and has approved by the city a storm water detention/retention facility shall be eligible for a credit

toward the storm water utility rate for the site served by the facility, subject to the following:

(a) To qualify for a credit, the detention/retention pond and associated facilities must adequately perform storm water treatment functions through the use of such methods as oil/water separators, bioswales, wet ponds, cartridge filter systems, or other means. The city may revoke any credit granted under this section upon a determination that the facilities are out of compliance with this section.

(b) The owner of record must provide the city's public works department with a copy of the facility's "as built" plans, stamped and signed by the owner's engineer, to verify that the drainage system has adequate capacity to meet the design criteria for which the owner is requesting a credit. The engineer shall also provide a stamped and signed operations manual for the retention/detention pond. New capacity calculations, "as built" plans, and a new operations manual shall be provided to the city if the retention/detention pond is increased or decreased in size.

(c) Annually by January 1 of the year preceeding the year for which the credit is being requested, each owner of record shall provide a certified statement on a form provided by the city verifying that all required maintenance has been performed in accordance with the operations manual. Once every five years, the certified statement shall be stamped and signed by the owner's engineer.

(d) The owner of record shall provide the city with a "hold harmless" statement on a form provided by the city that indemnifies the city from any loss arising from the construction and maintenance and operation of the retention/detention pond and associated private drainage facilities for both the quantity and quality of water runoff from the owner's property. This statement shall be signed by the owner and will be recorded with the county auditor by the owner of record. The owner of record shall provide a copy to the city showing the county auditor's recording number stamped on it before the credit will be given by the city.

(e) Each owner of record must enter into an agreement that allows the city to enter upon the owner's property to inspect the retention/detention pond and associated drainage facilities and verify all information submitted by the owner and his or her engineer. The agreement shall be on a form provided by the city and shall be recorded with the county auditor by the owner. The owner shall provide a copy to the city showing the county auditor's recording number stamped on it before the credit will be given by the city.

- (f) Credit shall be given as follows:
- (1) *Retention facilities:*
 - a. One hundred-year storage: Eighty-five percent credit.
 - b. Fifty-year storage: Forty percent credit.
 - c. Twenty-five-year storage: Twenty percent credit.
 - d. Ten-year storage: Ten percent credit.
 - (2) *Detention facilities:*
 - a. One hundred-year storage facility with release rate of fifty percent of the predevelopment discharge rate for a two-year storm: Eighty-five percent credit.
 - b. Fifty-year storage facility with release rate of fifty percent of the predevelopment discharge rate for a two-year storm: Forty percent credit.
 - c. Twenty-five-year storage facility with release rate of fifty percent of the predevelopment discharge rate for a two-year storm: Twenty percent credit.
 - d. Ten-year storage facility with release rate of fifty percent of the predevelopment discharge rate for a two-year storm: Ten percent credit.

Section 2. Effective Date. This Ordinance shall be in full force and effect five days after its passage, approval, posting and publication as provided by law. A summary of this Ordinance may be published in lieu of publishing the ordinance in its entirety.

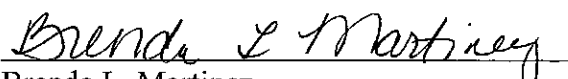
Section 3. Severability. If any provision of this ordinance, or ordinance modified by it is determined to be invalid or unenforceable for any reason, the remaining provision of this ordinance and ordinances and/or resolutions modified by it shall remain in force and effect.

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



Mayor, Rebecca Olness

Attested:



Brenda L. Martinez,
City Clerk

APPROVED AS TO FORM:

Chris Bacha
Kenyon Disend, PLLC
City Attorney

Published: 12/28/2012
Posted: 12/21/2012
Effective Date: 1/2/2013