

SPONSORED BY: Council Member Taylor
CO-SPONSORED BY: Council Member Goodwin

CITY OF BLACK DIAMOND
WASHINGTON
ORDINANCE NO. 13-1000

AN ORDINANCE OF THE CITY OF BLACK DIAMOND, WASHINGTON, RELATING TO LICENSING OF BUSINESS ACTIVITIES; AMENDING BDMC 2.58.025 BY ESTABLISHING AN ADDITIONAL EXEMPTION; AMENDING BDMC 2.58.030 BY ESTABLISHING ADDITIONAL ELIGIBILITY CRITERIA; AMENDING BDMC 2.58.090 BY ESTABLISHING ADDITIONAL GROUNDS FOR REVOCATION OR SUSPENSION; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, recent amendments to Chapter 69.51A RCW, relating to the medical use of cannabis have expanded the scope of certain activities, involving the use of cannabis for medical purposes that are permitted under state law; and

WHEREAS, the passage of Initiative 502 has further legalized the possession and private recreational use of marijuana and authorizes, subject to further regulation, the manufacture, packaging, distribution and retail sale of cannabis; and

WHEREAS, the City Council understands that while the medical benefits of cannabis have been recognized by the state legislature and that the voters have approved amendments to state law to permit the limited manufacture, packaging, distribution, retail sale, and recreational use and possession of cannabis, cannabis remains a Schedule I controlled substance under the federal Controlled Substances Act (CSA), and possession, distribution and use of cannabis is still a violation of federal law; and

WHEREAS, the United States Department of Justice has stated that although state law may authorize the use and possession of cannabis, persons who are in the business of, or knowingly facilitate, the business of cultivating, selling or distributing marijuana are in violation of the Federal Controlled Substances Act, regardless of state law, and that, state laws and local ordinances are not a defense to criminal or civil enforcement of federal law with regard to such conduct; and

WHEREAS, the City Council finds that it is a public nuisance for a licensee to engage in, permit or acquiesce in the use the business premises for drug activity that is unlawful under federal law, even if such activity is or may be lawful under state law; and

WHEREAS, the City Council desires to adopt additional amendments clarifying that an applicant for a business license whose business activities, or proposed business activities, violate or are not in compliance with state, federal or local drug laws would be ineligible for a business license and further clarifying the conditions under which a business license may be suspended or revoked; and

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

Section 1. Amendment of BDMC 2.58.025 (Exemptions). Section 2.58.025 of the Black Diamond Municipal Code is hereby amended (amendments shown in legislative revisions marks) to read as follows:

2.58.025 - Exemptions.

The following shall be exempt from the provisions of this chapter:

- A. Minors engaged in babysitting, delivery of newspapers, lawn mowing, car washing, and similar activities.
- B. Any instrumentality of the United States, State of Washington, or any political subdivision thereof, with respect to the exercise of governmental functions.
- C. All special event organizers or vendors operating at any authorized special event so long as each vendor is registered with the event coordinator and has a valid state business license.
- D. Nonprofit organizations, including but not limited to religious, civic, charitable, benevolent, nonprofit, and cultural or youth organizations.
- E. Any farmer, gardener, or other person who sells, delivers or peddles any fruits, vegetables, berries or any farm produce or edibles raised, gathered, or produced by such person within the state.
- F. Any individual in possession of a valid direct retail endorsement, as established in RCW 77.65.510, to sell, deliver, or peddle any legally harvested retail-eligible species, as that term is defined in RCW 77.08.010, that is caught, harvested, or collected under rule of the department of fish and wildlife by such a person at a temporary food service establishment, as that term is defined in RCW 69.06.045.

G. Businesses subject to the city's utility tax, Chapter 5.08.

H. Businesses exempt from local business licensing requirements under state or federal law.

Section 2. Amendment of BDMC 2.58.030 (Eligibility for License). Section 2.58.030 of the Black Diamond Municipal Code is hereby amended (amendments shown in legislative revisions marks) to read as follows:

2.58.030 - Eligibility for license.

A. No person shall be eligible for a City of Black Diamond business license, and no business license shall be issued or renewed, if any of the following conditions apply:

1. The applicant is under the age of eighteen.
2. The type of business to be conducted under the license is prohibited by zoning or other regulations from being conducted at the location indicated on the license application.
3. The applicant knowingly provided false or materially misleading information on the business license application or during the application process.
4. The applicant is not eligible under any other statute, law, ordinance, or regulation to be licensed to conduct the type of business for which the city license would be issued.
5. At the time of making the application, the applicant's eligibility for the type of license sought is revoked or suspended pursuant to this chapter.
6. The applicant, or a business within the city which is owned in whole or part by the applicant, owes to the City of Black Diamond any unpaid license fees and/or unpaid fines imposed for violations of this chapter.
7. The business activities, or proposed business activities, to be licensed violate or are not in compliance with state, federal or local laws.
8. The business activities, or proposed business activities, to be licensed are injurious to the public health or safety.
9. The business activities, or proposed business activities, to be licensed constitute a public nuisance.

Section 3. Amendment of BDMC 2.58.090 (Grounds for Revocation, Suspension or Denial). Section 2.58.090 of the Black Diamond Municipal Code is hereby amended (amendments shown in legislative revisions marks) to read as follows:

2.58.090 - Grounds for revocation, suspension or denial.

A. In accordance with Section 2.58.080(C), the clerk may revoke, suspend, or deny any business license issued under the provisions of this chapter on any one or more of the following grounds:

1. The license was procured by fraud or by false representation of fact;

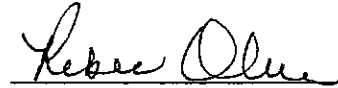
2. The licensee has violated or failed to comply with any of the provisions of this chapter;
3. Applicant or licensee ~~M~~ makes a misrepresentation or fails to disclose a material fact to the city related to any of the obligations set forth in this chapter; or
4. The licensee, or licensee's employees or agents, have engaged in, have permitted or have acquiesced in unlawful drug activity on the business premises. For purposes of this section, the term "permitted" shall mean, in addition to its ordinary meaning, that licensee has actual or constructive knowledge of the circumstances which would foreseeably lead to the unlawful drug activity. "Unlawful drug activity" means, manufacturing, delivering, selling, storing, or giving away any controlled substance, as defined in the Washington Uniform Controlled Substances Act (RCW CH. 69.50) or the Federal Controlled Substances Act (21 U.S.C. § 801 et. seq.), in violation of state, federal or local law.
5. The licensee's continued conduct of the business for which the license was issued will result in a substantial threat to the public health, safety or welfare by reason of any of the following:
 - a. The licensee, his employees or agents acting within the scope of their employment have been convicted of a crime which bears a direct relationship to the conduct of the business for which the license has been issued;
 - b. The licensee, or his agents or employees while acting within the scope of their employment, have, in the conduct of the business for which the license has been issued, violated a law or ordinance relating to the public health, welfare or safety after receiving warning from the city;
 - c. The conduct of the business for which the license was issued has resulted in the creation of a public nuisance, as defined by the Black Diamond Municipal Code or by state law;
 - d. Is in violation of a zoning regulation of the city; or
 - e. Is indebted or obligated to the city for past due fees or taxes, excluding special assessments such as LID assessments.

Section 4. 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 5. 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.

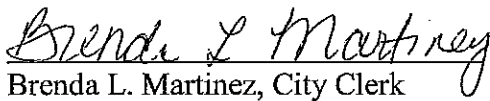
ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 18 DAY OF April, 2013.

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: 4/18/13
Passed by the City Council: 4/18/13
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Effective Date: 5-1-13