

**ORDINANCE NO. 20-1140**

**AN EMERGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, ADDING A NEW SUBSECTION TO CHAPTER 8.16 OF THE MUNICIPAL CODE RELATING TO CONSTRUCTION ACTIVITY DURING THE COVID-19 PANDEMIC; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, United States Secretary of Health and Human Services Alex Azar declared a public emergency for the novel coronavirus (COVID-19) beginning on January 27, 2020; and

**WHEREAS**, on February 29, 2020, Governor Jay Inslee issued a Proclamation 20-05, declaring a State of Emergency in all counties of the State of Washington due to the number of confirmed cases of COVID-19 in the state; and

**WHEREAS**, on March 11, 2020, Governor Inslee issued Proclamation 20-07, prohibiting all events or other gatherings of more than 250 people; and

**WHEREAS**, on March 13, 2020, the Mayor of Black Diamond declared an emergency pursuant to RCW 38.52.070, for the purpose of protecting public health and City employees;

**WHEREAS**, on March 13, 2020, Governor Inslee announced that all K-12 public and private schools in Washington must close until at least April 24, 2020; and

**WHEREAS**, on March 23, 2020, Governor Inslee issued Proclamation 20-25, prohibiting all people in Washington State from leaving their homes or participating in social, spiritual and recreational gatherings of any kind regardless of the number of participants, and all non-essential businesses in Washington State from conducting business (“Stay Home – Stay Healthy Order”); and

**WHEREAS**, on March 23, 2020, Governor Inslee designated most types of construction activity in the State to be “non-essential” under his Stay Home – Stay Health Order and therefore prohibited until further notice; and

**WHEREAS**, on March 24, 2020, in compliance with Governor Inslee’s Stay Home – Stay Healthy Order, the Mayor of Black Diamond ordered the closure of the City of Black Diamond’s facilities, except as needed to ensure continuity of operations of essential critical infrastructure and government functions critical to public health and safety; and

**WHEREAS**, on March 25, 2020, Governor Inslee issued a Construction Guidance memorandum clarifying that commercial and residential construction were not authorized under his Stay Home – Stay Healthy Order (Proclamation 20-25) because such activity was not considered to be essential; and

**WHEREAS**, on April 2, 2020, Governor Inslee announced a month-long extension of Proclamation 20-25, which will now continue through at least May 4, 2020; and

**WHEREAS**, on April 24, 2020, Governor Inslee issued an Addendum to Proclamation 20-25, rescinding his previous guidance that had declared most construction activity to be non-essential, and establishing criteria for implementing a limited Phase 1 Construction Restart, which allows for residential and commercial construction activities on existing projects to resume, provided that job sites adhere to the comprehensive *Phase 1 Construction Restart COVID-19 Job Site Requirements* referenced in the Governor's April 24<sup>th</sup> Addendum; and

**WHEREAS**, the Centers for Disease Control ("CDC") has identified the public health threat posed by the novel coronavirus pandemic as "high"; and

**WHEREAS**, the City is at high risk of being impacted by the novel coronavirus COVID-19, which upon diagnosis requires specific medical treatment and quarantine to reduce the virus' spread throughout the general population; and

**WHEREAS**, the risk to City employees is real and the infection of just one employee may cause the mandatory quarantine of essential employees; and

**WHEREAS**, to reduce the potential for transmission within the City of Black Diamond proactive measures are being taken to protect employees and the public at large, including the purchase of additional emergency supplies, potential sanitization of city facilities, support of impacted employees, and a potential reduction in service; and

**WHEREAS**, the City is granted broad powers under state law to enact measures to protect public health and safety; and

**WHEREAS**, the health, safety, and welfare of City residents and City staff is of the utmost importance to the City and the City Council; and

**WHEREAS**, the Black Diamond City Council wishes to amend its nuisance code to empower City staff to enforce the Governor's approved job site safety requirements so as to mitigate risks to public health and safety that might otherwise be created by resuming private construction activity without observing appropriate COVID-19 safety requirements; and

**WHEREAS**, on March 24, 2020, Governor Inslee amended Proclamation 20-25 by issuing Proclamation 20-28, which waives and suspends certain portions of the state Open Public Meetings Act (OPMA), Ch. 42.30 RCW, including the requirement of holding in-person meetings of city legislative bodies; and

**WHEREAS**, Proclamation 20-28 prohibits the City Council from conducting any meetings under the OPMA unless (a) the meeting is not conducted in-person and instead provides an option for the public to attend by, at a minimum, telephonic access, but also potentially by internet or other remote means of access, and (b) the Council provides the ability for all persons attending to hear each other at the same time; and

**WHEREAS**, Proclamation 20-28 prohibits the City Council from taking action, as defined in RCW 42.30.020, at public meetings held under the OPMA waiver conditions described above unless the matters upon which action is taken are either “necessary and routine” or “necessary to respond to the COVID-19 outbreak and the current public health emergency”; and

**WHEREAS**, on April 22, 2020, the OPMA waivers and suspensions announced in Proclamation 20-28 were extended by the leadership of the Washington State Legislature until at least May 4, 2020; and

**WHEREAS**, the Black Diamond City Council finds that the need to amend its nuisance code as provided in this Emergency Ordinance constitutes an emergency, requiring urgent action by the Council to respond to the public health and safety risks posed by the COVID-19 pandemic;

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

**Section 1. BDMC Section 8.16.010 Amended.** Section 8.16.010 of the Black Diamond Municipal Code is hereby amended to declare a new category of public nuisance in subsection X, and to move the acts described in former subsection X to a new subsection Y, all as shown in underlined text, below:

- X. Any construction activity occurring on job sites within the city, while the Governor’s Proclamation 20-25 remains in effect, that fails to comply with the Phase I Construction Restart COVID-19 Job Site Requirements as set forth in the Governor’s Addendum to Proclamation 20-25, dated April 24, 2020; and
- Y. Any nuisance as defined and prohibited in any other provision of this code.

A copy of the Governor’s *Phase I Construction Restart COVID-19 Job Site Requirements* referenced in the amended BDMC 8.16.010.X is attached hereto as Exhibit A and shall be maintained at City Hall, but shall not be codified in the Black Diamond Municipal Code.

**Section 2. Necessary Action to Address the COVID-19 Emergency.** The Council hereby adopts and incorporates the above recitals as findings of fact in support of the urgent necessity of adopting this Emergency Ordinance immediately in response

to the COVID-19 outbreak, without waiting for the resumption of in-person City Council meetings, as provided in the Governor's Proclamation 20-28.

**Section 3. Severability.** Should any section, paragraph, sentence, clause, or phrase of this Emergency Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Emergency 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 Emergency Ordinance or its application to other persons or circumstances.

**Section 4. Effective Date of Public Emergency Ordinance.** The Council further adopts the above recitals as findings of fact supporting the designation of this ordinance as a public emergency ordinance necessary for the protection of public health, public safety, public property, and/or the public peace, pursuant to RCW 35A.12.130. This Emergency Ordinance, or a summary hereof, shall be published in the official newspaper of the City. As an Emergency Ordinance adopted by a vote of at least a majority-plus-one of the whole Council, it shall take effect and be in full force immediately upon adoption.

**ADOPTED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND AT A REGULAR MEETING THEREOF ON THE 7<sup>TH</sup> DAY OF MAY, 2020.**


CITY OF BLACK DIAMOND



---

Carol Benson, Mayor

Attest:



Brenda L. Martinez, City Clerk

Approved as to form:

---

David Linehan, City Attorney

Filed with the City Clerk: 5/7/2020  
Passed by the City Council: 5/7/2020  
Ordinance No. 20-1140  
Date of Publication: 5/13/2020  
Effective Date: May 7, 2020