

## City of Black Diamond

### Protocols for Remote Public Hearings

These protocols seek to provide general guidance for conducting public hearings in the City of Black Diamond using remote or virtual meeting technology when it is not possible to conduct hearings in person due to, for example, a viral pandemic or other emergency. These protocols apply to all hearings conducted under the auspices of the Department of Community Development and the Master Development Review Team.

#### I. General Policies

A. The City of Black Diamond shall conduct remote hearings using the Zoom video meeting software platform.

B. In addition to the Zoom video connection, a toll-free telephone call-in line will also be provided as an alternative for any members of the public who wish to listen to the hearing and, in the event of an open-record public hearing, provide testimony when called upon.

C. The Zoom video link and telephone call-in number will be listed on the required public notice for the hearing and may alternatively be obtained by contacting the City Department of Community Development at least 36 hours before the start of the hearing.

D. To the degree possible, all public hearings conducted using remote meeting technology should be treated the same as in-person hearings in accordance with the Black Diamond Municipal Code and Hearing Examiner Rules of Practice and Procedure. This includes the expectation that all participants must log in to be able to participate in the hearing and will conduct themselves with the same courtesy and respectful decorum as would be expected for an in-person hearing.

E. If at any time the Hearing Examiner determines that the technology supporting the remote hearing is not performing adequately, the Examiner may, in the Examiner's sole discretion, but after consulting with the parties, either (i) temporarily suspend or continue the hearing to allow time to fix the technical issue; (ii) make arrangements for submission of additional materials or testimony in writing at a later date; (iii) continue the hearing to a future time and date certain; or (iv) make any other arrangements the Examiner determines are necessary and appropriate, including for a hearing conducted on written materials alone.

F. All matters not addressed in these Protocols for Remote Public Hearings shall be decided by the Hearing Examiner in a manner that adheres as closely as is practical under the circumstances to the Hearing Examiner Rules of Practice and Procedure and the Black Diamond Municipal Code.

## II. Technical Procedures

A. A unique Zoom meeting ID, password, and remote access link should be created for every public hearing. The Zoom meeting shall be recorded to preserve the record to the same extent as a recording of an in-person public hearing.

B. Each meeting will have a designated meeting operator who is well-trained in running the Zoom video meeting software and who is responsible for establishing the meeting ID, password, and remote access link. It is the meeting operator's duty to initiate and monitor the meeting to ensure it is properly recorded.

C. A "waiting room" shall be used by the meeting operator to control admission and activate or mute the microphones of remote participants to ensure an orderly presentation and consistency with the Hearing Examiner's directions.

D. The meeting operator shall control who is and is not allowed to use the "share screen" function and sets the presentation mode (e.g., "Gallery view" or "Speaker view").

E. To the extent possible, unique screen names for all known participants shall be assigned in advance. To assist with preparing a clear record, naming conventions for screen names shall be as follows:

- Project Proponents: FirstLastName/Applicant
- City personnel: FirstLastName/Title
- Public: FirstLastName/Public
- Hearing Examiner: ExaminerLastName

## III. Public Communication

A. The department preparing the staff report is responsible for providing public notice of the time, date, and remote hearing protocols to the applicant, parties of record, and anyone who requests such information.

B. Notice of the remote public hearing shall be provided as required in the Black Diamond Municipal Code for in-person public hearings. The public notice shall identify an email address and a staff member at the City for members of the public to contact regarding questions or to request to be placed on the list for offering public testimony.

#### IV. Public Testimony and Exhibits

A. Members of the public wishing to testify orally during an open-record public hearing shall notify the City's designated contact person of their desire to give testimony at least 4 hours before the start of the hearing and shall indicate whether they will be participating via the Zoom video link or by telephone. Persons wishing to testify shall provide their name, home address, and phone number, and an email address if available.

B. Members of the public wishing to submit testimony in writing shall submit their written comments (whether in electronic or paper form) to the City's designated contact person or email address no later than 24 hours before the start of the hearing. The designated person's contact information shall be provided in the public hearing notice. A member of the public who testifies orally at the public hearing may submit a written copy of their oral statement to the City for inclusion in the record without having to provide a copy of the written statement 24 hours in advance. However, written materials that supplement the oral testimony with additional substantive content need to be submitted to the City's designated contact person at least 24 hours in advance.

C. At the beginning of an open-record hearing, the meeting operator shall provide the Hearing Examiner with a list of the members of the public who have signed up to provide live testimony, indicating whether each participant will be participating by video link or telephone. A participant who changes his or her mode of participation before the start of public testimony (e.g., telephone instead of video) will still be permitted to offer testimony.

D. When it is time for public testimony during an open-record hearing, participants shall be recognized to speak in the order in which they signed up. A public participant who is not present and ready to speak when called on will be placed at the end of the queue, to be called on when all other participants have completed their public testimony.

E. All public participants in an open-record public hearing shall be sworn in and shall begin their comments by stating and spelling their name and providing contact information for the record. The Hearing Examiner shall control the time allotted for remote public testimony in the same manner as for in-person public hearings.

#### V. Exhibits – Open Record Pre-Decision Hearings

A. Pre-filed exhibits from the Applicant and City: All exhibits planned to be used as evidence at the hearing, including the application materials and Staff Report, must be sent via email to the City and delivered in hardcopy to the Hearing Examiner at least 7 calendar

days before the hearing date (or such other date established by the Hearing Examiner). The Applicant and the City must also arrange a means to receive exhibits during the hearing instantaneously (e.g. via e-mail), in the event of rebuttal exhibits being presented during the hearing.

B. Pre-filed exhibits from the public: Any member of the public wishing to offer documentary exhibits for the record at an open-record hearing shall email them to the designated staff contact at least 24 hours prior to the start of the hearing to allow time for a copy of the exhibit to be provided to the parties and the Hearing Examiner in advance, and to allow the document to be shared at the hearing with all participants. A public participant wishing to offer documentary exhibits must mark each exhibit with a unique exhibit number using the following format:

“FirstLastName - ###” (e.g., “SusanSmith – 1”; “SusanSmith – 2” etc.)

Exhibits submitted by members of the public should be marked in the upper-left corner, either with an electronically applied header or by legible handwriting. Any exhibits not submitted to the City at least 24 hours prior to the start of the public hearing may be excluded from consideration at the sole discretion of the Hearing Examiner.

C. Delivery of hard copies for the record: Pre-filed exhibits may be able to be presented electronically on screen during the hearing, however, a hard copy is required both in case the exhibit cannot be adequately viewed on screen during the hearing, and because a complete record containing all exhibits is required to be compiled for the record. Hard copies of pre-filed exhibits submitted by the Applicant or another party should be submitted to the City in a packet or binder with all exhibits numerically marked and presented in sequential order. The Applicant and all other parties shall provide the City a complete hard-copy set of all exhibits presented by such party by the close of the open-record hearing. Parties are responsible for contacting the City’s designated contact person to arrange a mutually agreeable time and manner for delivery of the hard copies.

D. Exhibits submitted during the hearing: Pre-filed exhibits are highly encouraged. However, in the event that a member of the public discovers new information not available by the pre-filing deadline, or the Applicant or City wish to submit a supplemental or rebuttal exhibit, that exhibit may be submitted during the hearing via email to the designated staff contact, City Attorney, and the Applicant, as applicable. The designated staff contact will then forward the exhibit to the Hearing Examiner.

E. Potential written closings and rebuttals: The Hearing Examiner may decide to leave the hearing record open to accommodate written rebuttal and written closing briefs.

Written rebuttal from all participants will be deemed to be provided under continuing oath as said oath was delivered during the virtual hearing, but also encouraged to be delivered in the form of a declaration or affidavit.

#### VI. Witness Testimony and Objections

A. Each witness should be called by name to appear by the appropriate City or Applicant representative.

B. Before testifying, each witness will be asked by the Hearing Examiner to state and spell their name for the record and must take an oath or affirmation to tell the truth.

C. Representatives of the City or Applicant shall state any objections clearly, accompanied by a raised hand gesture. Opposing counsel/representative should be prepared to respond to the objection or withdraw a question being asked. Witnesses should stop speaking immediately when an objection is lodged and should not respond to a question when an objection has been raised. The Hearing Examiner will rule on the objection and indicate when/if it is ok for the witness to proceed.

#### VII. Guidance for Participation by Witnesses and Public

A. The remote hearing is a recorded proceeding. To get a clear recording for the record, it is important that only one person speak at a time, and that participants speak clearly.

B. Participants who are not actively presenting testimony or argument (e.g. waiting to appear as a witness) should mute their own microphones.

C. Witnesses should make every effort to isolate themselves from background noises in the home or office environment from which they are broadcasting.

D. Pay attention to other participants in the meeting. If a speaker's audio is disrupted please signal the speaker with a raised hand that they should stop. The speaker should then stop speaking until audio is reestablished.

E. The Hearing Examiner may mute any participant who is not able to follow these protocols and/or introduces unacceptable levels of intrusive noise or speech.

F. All parties and public participants in a remote hearing shall ready their computer, or ready their telephone if dialing by telephone, at least 15 minutes before the scheduled hearing time to ensure timely participation.

### VIII. In-Person Attendance

A. The following persons are anticipated to attend public hearings in person at City Council Chambers:

- Hearing Examiner
- MDRT Director (for MPD projects)
- MDRT Planner (for MPD projects)
- Community Development Director (for non-MPD projects)
- City Attorney

B. Legal counsel or another representative of the Applicant is invited to attend in person but may elect to attend remotely.

C. All witnesses for the City and Applicant shall attend remotely by Zoom video link or telephone.

D. All members of the public who wish to participate must do so remotely by Zoom video link or telephone.

### IX. Technical Limitations and Difficulties

A. Anyone who lacks the ability to participate in the remote hearing because of technical limitations should call or email the designated staff member by 5:00 p.m. the day before the hearing to arrange for drop-off submission of written testimony for inclusion in the record. The project applicant and/or a member of City staff may elect to respond to any such comments in writing prior to the start of the hearing. If a written response is given, it will be included along with the original comment in the record of the hearing.

B. Anyone who experiences technical difficulties during the public hearing (whether participating by Zoom video link or by telephone) that affect his/her ability to participate in the hearing should immediately email the designated staff member listed in the public hearing notice and include a phone number where the person may be reached. If the technical difficulties cannot be promptly resolved, the Hearing Examiner will be informed of the problem and arrangements will be discussed and determined with the Hearing Examiner regarding how best to extend the public testimony period to accommodate participation by the affected person.