

ORDINANCE NO. 22-1172

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, REPEALING THE 2020 ANNUAL AMENDMENTS TO THE COMPREHENSIVE PLAN (ORDINANCE NO. 21-1169); SUSPENDING FURTHER WORK ON THE PROPOSED 2021 ANNUAL AMENDMENTS; DIRECTING PLANNING RESOURCES TOWARD THE 2024 MAJOR PERIODIC UPDATE TO THE COMPREHENSIVE PLAN; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, in August 1996, the City of Black Diamond adopted a Comprehensive Plan in conformance with the Washington State Growth Management Act; and

WHEREAS, the 1996 Comprehensive Plan was repealed and replaced in 2009; and

WHEREAS, RCW 36.70A.130 requires jurisdictions to periodically review and update their comprehensive plans; and

WHEREAS, the City Council adopted its 2015 periodic update to the Comprehensive Plan in May 2019 via Ordinance No. 19-1121; and

WHEREAS, the Puget Sound Regional Council (PSRC) partially certified the City's Comprehensive Plan in January 2020, specifying four conditions necessary to obtain full certification; and

WHEREAS, City staff worked with PSRC senior staff to develop additional Comprehensive Plan amendments to satisfy the PSRC's conditions for full certification; and

WHEREAS, the City Planning Commission and City Council conducted numerous joint work sessions to review staff's proposed revisions to the Comprehensive Plan for the 2020 update cycle; and

WHEREAS, the City Planning Commission held meetings and conducted a public hearing on the proposed 2020 Annual Amendments to the Comprehensive Plan on December 1, 2020, and then voted on December 8, 2020 to recommend adoption by the City Council; and

WHEREAS, the proposed 2020 Comprehensive Plan Update was sent to the Washington State Department of Commerce and other agencies for 60-day review as required by the GMA pursuant to RCW 36.70A.106, and no written comments were received; and

WHEREAS, on May 26, 2021, a SEPA Determination of Nonsignificance (DNS) for the proposed 2020 Annual Amendments to the Comprehensive Plan was issued in compliance with WAC 197-11-340, and that SEPA DNS was upheld on appeal to the City's hearing examiner in a decision dated November 4, 2021, and further affirmed on December 1, 2021, when the Hearing Examiner denied the appellant's motion for reconsideration; and

WHEREAS, on December 2, 2021, the City Council conducted a duly noticed public hearing, received and considered public comments, and then passed Ordinance No. 21-1169 to adopt the 2020 Annual Amendments to the Comprehensive Plan with one additional change recommended by City Staff ("2020 Annual Amendments"); and

WHEREAS, although the City prevailed in the SEPA appeal, it nonetheless had the effect of delaying the Council's ability to adopt the 2020 Annual Amendments until December 2, 2021, when the SEPA appeal was resolved; and

WHEREAS, the 2020 Annual Amendments and the related SEPA DNS have now been further appealed to the state Growth Management Hearings Board (GMHB), and it is unlikely that the GMHB will issue a ruling on this appeal until August 2022, and depending on the outcome, that decision will be subject to still further potential appeals to Superior Court, the Court of Appeals, and potentially the state Supreme Court; and

WHEREAS, the ongoing appeals of the 2020 Annual Amendments and related SEPA DNS have left the City's planning efforts in a state of flux, precluding the City from making further progress on long-range planning efforts with any certainty while the Comprehensive Plan remains under appeal; and

WHEREAS, on June 3, 2021, the City Council passed Resolution No. 21-1424, which established the final 2021 Docket of potential Comprehensive Plan amendments, to be studied by the Planning Commission with recommendations to follow; and

WHEREAS, the main focus of the 2021 Docket was to analyze discrepancies between the land use designations in the Future Land Use Map (FLUM) in the Comprehensive Plan and the Zoning Map in the Black Diamond Municipal Code; and

WHEREAS, a key objective of the 2021 Docket process was to harmonize the FLUM and the Zoning map in a way that better reflects public input, public preferences, and the City's anticipated needs, and that helps to bridge the gap between previously approved growth and the City's regional growth targets; and

WHEREAS, on November 11, 2021, after months of public hearings and analysis, including extensive public participation and public comment that was incorporated into its recommendations, the Planning Commission forwarded a recommended set of 2021 annual amendments to the City Council for review and adoption ("2021 Annual Amendments"), which resolved the inconsistencies between the FLUM and the Zoning map; and

WHEREAS, as part of this process, the City's SEPA Official issued a DNS for the proposed 2021 Annual Amendments, which was then immediately appealed to the City's Hearing Examiner, with the appellant raising many of the same or similar concerns that it raised in the appeal of the 2020 Annual Amendments, particularly with respect to alleged inaccuracies or deficiencies in the transportation modeling used by the City's consultants when updating the Comprehensive Plan in 2015 (which was later finalized in 2019); and

WHEREAS, the appellant has argued that the Comprehensive Plan is flawed and that the 2020 and 2021 Annual Amendments cannot be approved unless and until the City updates the transportation modeling, and City Staff is concerned that even if the City were (once again) to prevail in the 2021 SEPA appeal to the Hearing Examiner, any Council action on the 2021 Annual Amendments would likewise be appealed to the GMHB and possibly beyond; and

WHEREAS, with these concerns in mind, on February 18, 2022, the City advised the Hearing Examiner that the SEPA DNS for the 2021 Annual Amendments was being withdrawn, rendering the SEPA appeal moot, and Director Davis issued the formal notice of withdrawal of the DNS on February 23, 2022; and

WHEREAS, as Director Davis explained, the City does not believe it is a productive use of limited staffing and financial resources to continue pursuing the 2021 Annual Amendments (and related appeals) while the previous year's Comprehensive Plan update remains in flux; and indeed, no final action on the recommended 2021 Annual Amendments could even be taken until there is clarity on the status of the 2020 Annual Amendments, including resolution of all related appeals, which could continue for unknown duration; and

WHEREAS, continuing work on the proposed 2021 Annual Amendments and the related appeals seems unwise and impractical because, depending on the outcome of the 2020 appeal to the GMHB (and beyond), additional revisions may be required to the Comprehensive Plan, which could trigger further changes to the proposed 2021 Annual Amendments, which may then require further SEPA review and a revised threshold determination; and

WHEREAS, the GMA requires the City to undertake and complete its major periodic review of the Comprehensive Plan by June 2024, which will be an enormous undertaking for the City, and which may entail extensive revisions to many of the various elements of the Plan; and

WHEREAS, work on the 2024 periodic update cannot be completed with any certainty or confidence so long as the Comprehensive Plan remains under continuous appeal; and

WHEREAS, given the scope of the efforts that will be required for the 2024 major periodic update, City Staff have advised, and the City Council finds, that it would be in the

City's best interest to repeal the 2020 Annual Amendments, suspend further work on the proposed 2021 Annual Amendments, and direct all further long-term planning resources toward completion of the 2024 major periodic update; and

WHEREAS, by repealing the 2020 Annual Amendments and suspending further work on the proposed 2021 Annual Amendments, the City will be able to proceed with the 2024 periodic update based on the stable and certain 2019 Comprehensive Plan, which has already been upheld as valid by the GMHB during a previously completed appeal; and

WHEREAS, by repealing the 2020 Annual Amendments and suspending further work on the proposed 2021 Annual Amendments, the City will not be faced with the continual distraction and drain of resources caused by defending multiple appeals from the 2020 and 2021 update cycles; and

WHEREAS, the voluminous work of City Staff and the Planning Commission on the 2020 and 2021 updates will not be lost or rendered futile by the proposed repeal of Ordinance 21-1169; rather, their work will simply be rolled into the larger task of the 2024 major periodic update and can be considered on a holistic basis with other revisions that will necessarily be required to other elements of the Comprehensive Plan (including an update to the transportation modeling, as the appellants have so strongly urged); and

WHEREAS, a duly noticed public hearing was held on March 17, 2022, for the Council to receive and consider public comment on the proposed actions described in this Ordinance;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. City of Black Diamond Ordinance No. 21-1169, which adopted the 2020 Annual Amendments to the Comprehensive Plan, is hereby repealed in its entirety.

Section 2. All further work on the proposed 2021 Annual Amendments to the Comprehensive Plan, as authorized by Resolution 21-1424 for study and recommendation by the Planning Commission, is hereby suspended.

Section 3. The Mayor is requested to direct City Staff and consultants to focus all further long-range planning efforts and resources toward the work necessary for completion of the 2024 major periodic update to the Comprehensive Plan, which must be accomplished by June 30, 2024, as provided in RCW 36.70A.130.

Section 4. The foregoing recitals are hereby adopted as legislative findings of the City Council in support of the actions taken in this Ordinance.

Section 5. This Ordinance shall be in full force and effect five (5) days after publication as required by law. A summary of this Ordinance may be published in lieu of

the entire Ordinance, as authorized by State law.

Section 6. If any portion of this Ordinance, or its application to any person or circumstance, is determined by final order of a court of competent jurisdiction to be invalid, pre-empted, or otherwise unenforceable for any reason, such determination shall not affect the validity or enforceability of the remaining provisions hereof or its application to other persons or circumstances.

**ADOPTED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND AT A
REGULAR MEETING THEREOF ON THE 17TH DAY OF MARCH, 2022.**

Mayor Carol Benson

ATTEST:

Brenda L. Martinez, City Clerk

APPROVED AS TO FORM:

David Linehan, City Attorney

Filed with the City Clerk:

Date of Publication:

Effective Date: