

ORDINANCE NO. 24-1205

AN ORDINANCE OF THE CITY OF BLACK DIAMOND, WASHINGTON, ADOPTING A ONE-YEAR MORATORIUM ON THE ACCEPTANCE, PROCESSING, AND/OR APPROVAL OF APPLICATIONS FOR BUILDING AND LAND DEVELOPMENT PERMITS AND RELATED LAND USE DECISIONS FOR BATTERY ENERGY STORAGE FACILITIES TO BE LOCATED WITHIN THE CITY OF BLACK DIAMOND; DECLARING AN EMERGENCY; PROVIDING FOR SEVERABILITY; AND PROVIDING THAT THE MORATORIUM WILL TAKE EFFECT IMMEDIATELY UPON PASSAGE.

WHEREAS, within the express terms of the Optional Municipal Code and the Growth Management Act, the Washington State Legislature has conferred upon the governing bodies of Washington code cities the right to establish and adopt moratoria related to land uses, as set forth in RCW 36.70A.390 and RCW 35A.63.220; and

WHEREAS, recently, the City has received inquiries from a developer and potential applicant for land use approvals and development permits relating to battery energy storage facilities, in which questions have been posed regarding whether such facilities are allowed under the City's zoning code, as set forth in Title 18 of the Black Diamond Municipal Code (BDMC); and

WHEREAS, City staff have specifically been asked to issue a formal code interpretation as to whether such a battery energy storage facility would be allowed as a "utilities" use in the Community Commercial zoning district under Chapter 18.38, either as a matter of right for underground utilities or as a conditional use for aboveground utilities; and

WHEREAS, the City's development regulations, and specifically the definition of "Utilities" in BDMC 18.100.710 and the permitted and conditional uses provided in BDMC Chapter 18.38 (Community Commercial), Chapter 18.36 (Neighborhood Center), Chapter 18.32 (Medium Density Residential), and Chapter 18.30 (Single-Family Residential), have not been updated to reflect recent technological changes and business models in the energy storage and electric utility industry; and

WHEREAS, applying these outdated regulations in Title 18 BDMC to new technologies and business models could lead to approval of battery storage projects that are undesirable, unsafe, and/or inconsistent with long-term planning goals and objectives of the City, particularly when the existing regulations have not been reviewed and updated for best practices nor reconsidered in light of technological changes and potential effects such facilities have on surrounding areas and community resources; and

WHEREAS, the City Council has determined the following facts, and identified the following unknown risks and economic factors, that may be relevant in assessing the desirability of, and siting concerns associated with, battery energy storage facilities in the City of Black Diamond:

- A. Battery energy storage systems are essentially rechargeable battery arrays that store excess energy when demand on the electrical grid is low and can feed power back into the system when demand is high (or energy production is low).
- B. The elements used in batteries can pose risks of explosion from overheating and of environmental contamination.
- C. Battery energy storage facilities present fire hazards that can take weeks to extinguish, requiring massive volumes of water and chemicals to bring under control.
- D. Battery energy storage facilities are sites where hazardous chemicals such as cyanide and hydrofluoric acid are present and thus pose the potential for discharge to surrounding property, air, and groundwater in the event of a fire.
- E. Battery energy storage facilities create potential for air quality hazards in the event of a fire.
- F. Battery energy storage facilities may produce noise and visual impacts that are not currently well understood by the City.
- G. Battery energy storage facilities may produce impacts to wildlife that are not currently well understood by the City.
- H. Battery energy storage facilities may be more appropriate for heavy industrial zones than commercial, neighborhood retail and office, or residential zones.
- I. Battery energy storage facilities may create additional strain on local emergency response agencies and their personnel.
- J. The Washington State Department of Ecology is beginning to compile guidance on battery energy storage facility siting that the City wishes to study before updating its zoning and other regulations applicable to battery energy storage facilities.
- K. The State Legislature adopted House Bill 1216 in 2023, and new Washington state regulations codified at WAC 51.54A.0322 and intended to minimize the risks of lithium-ion battery energy storage facilities through fire safety requirements and construction standards will take effect soon. The City desires to study these new laws and regulations to determine what effects they will have on local regulatory authority.

- L. King County is studying whether its codes need updating to add conditions for approving these types of facilities, including zoning, safety, and insurance requirements. The City desires to learn about King County's regulatory initiatives before finalizing updates to the City's zoning regulations and official controls.
- M. Puget Sound Energy, which is conducting RFPs for third-party private entities to develop energy storage facilities connect via high-voltage transmission lines to PSE's regional substations, has published safety and reliability requirements for such facilities that need to be explored and better understood before the City can determine whether to permit battery energy storage facilities in the City, and under what conditions.
- N. It is unknown what fiscal or economic development benefits would flow to the City if battery energy storage facilities were permitted within the City or which zone(s) would be most advantageous for siting them. The City needs to investigate and analyze potential economic impacts and tax revenues associated with such projects.

WHEREAS, due to the unique characteristics of battery energy storage facilities, certain existing requirements in the code may not appropriately address or mitigate the community impacts and risks such facilities may present; and

WHEREAS, additional time is needed for the City to study whether such facilities are compatible and should be allowed within City limits, either as a permitted or conditional use, and if so, in which zone(s) and whether current zoning regulations in Title 18 and/or other official controls and development standards need to be updated to ensure such facilities can be safely and appropriately sited within the City; and

WHEREAS, processing applications for land use approvals, development permits, and related applications or code interpretations for battery energy storage facilities under existing zoning regulations and other official controls could potentially result in approvals of undesirable and incompatible development until such time that the City has properly reviewed its regulations and implemented any zoning code revisions or additional controls deemed necessary and proper for the health, safety, and general welfare of the City and its residents; and

WHEREAS, the City is currently in the middle of conducting its mandatory periodic review of its Comprehensive Plan, which work must be completed and amendments adopted by no later than December 31, 2024; and

WHEREAS, the Comprehensive Plan update work will include analysis and recommendations for need zoning code amendments to implement the Land Use element and Economic Development element of the Plan following its anticipated adoption in December 2024; and

WHEREAS, it would be an efficient use of resources and an appropriate exercise of its planning authority under the Growth Management Act and Chapter 35A.63 RCW for the City to integrate an analysis of whether, and under what regulatory parameters, battery energy storage facilities should be allowed uses within the City with the City's ongoing work on the Land Use chapter and other elements of the Comprehensive Plan and development regulations;

WHEREAS, the City Council has significant concerns about whether battery energy storage facilities can be appropriately reviewed and analyzed under current regulations and finds that unless the City acts immediately to preserve the status quo, there are likely to be adverse impacts on the City and the health, safety, and welfare of its citizens; and

WHEREAS, pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City may adopt a moratorium that is effective for no longer than six (6) months, but may adopt a moratorium that is effective for up to one (1) year if a work plan is developed for conducting appropriate studies and analyses over that longer period; and

WHEREAS, to promote the public health, safety, and welfare, the City Council deems it necessary and proper to impose a moratorium on land use and development permit applications related to battery energy storage facilities for a period one (1) year; and

WHEREAS, the City Council deems it appropriate to hold a public hearing on March 7, 2024, and may adopt additional findings following the conclusion of said public hearing;

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

Section 1. Preliminary Findings. The recitals set forth above are hereby adopted as the City Council's preliminary findings in support of the moratorium imposed by this ordinance. The City Council may, in its discretion, adopt additional findings following the conclusion of the public hearing referenced in Section 5 below.

Section 2. Moratorium Imposed. Pursuant to the provisions of Article 11, Section 11 of the Washington State Constitution, RCW 35A.63.220, and RCW 36.70A.390, a moratorium is hereby enacted on the acceptance, processing, and/or approval of applications for:

- a) building permits;
- b) clearing and grading permits;
- c) short plats;
- d) subdivisions;
- e) binding site plans;
- f) site plan reviews;
- g) conditional use permits;

- h) reasonable use exceptions;
- i) variances from Title 18 regulations; or
- j) deviations from any Black Diamond engineering design and construction standards or other technical codes

for any battery energy storage facility within the City or any other type of development permit, approval, or code interpretation in connection with same.

Section 3. Effective Period for Moratorium. The moratorium imposed under Section 2 of this ordinance shall be in effect for a period of one (1) year from the date this ordinance is passed and shall automatically expire at the conclusion of that one-year period unless the same is extended as provided in RCW 35A.63.220 and RCW 36.70A.390, or unless terminated sooner by the City Council.

Section 4. Effect on Vested Rights. The moratorium imposed under Section 2 of this ordinance shall apply prospectively only, after the effective date of this ordinance. Nothing in this ordinance shall be construed to extinguish, limit, or otherwise infringe on any permit applicant's vested development rights as defined by state law and City of Black Diamond regulations. Any pending and complete applications for interpretations of existing Black Diamond zoning regulations shall continue to be processed and reviewed under existing law (unless abandoned by the applicant), but the City's decision shall indicate that the Comprehensive Plan, applicable zoning regulations, and other official controls of the City are under review and subject to change, and that the updated regulations, if any, will apply to any development permit applications or land use approval applications received after the moratorium is lifted.

Section 5. Public Hearing. Pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City Council will hold a public hearing at the City Council's regular meeting, at 7:00 p.m., on Monday, March 7, 2024, or as soon thereafter as the business of the City Council shall permit, in order to take public testimony on this moratorium and to consider adopting further findings.

Section 6. Referral to Staff; Work Plan. City Staff and the Black Diamond Planning Commission are hereby authorized and requested, as part of their ongoing work on the 2024 Comprehensive Plan periodic update and review of current zoning regulations, to study the issues identified in this ordinance and to develop recommendations for whether battery energy storage facilities should be allowed uses within the City and, if so, what zoning regulations and public processes are needed to protect the health, safety, and welfare of the community and ensure that such facilities are developed in a manner that is compatible with the overall plan and vision for the City. These recommendations shall be reviewed and considered by the Black Diamond City Council for inclusion in the 2024 Comprehensive Plan update, Title 18 of the BDMC, and/or other official controls of the City. This work plan is subject to change upon subsequent direction of the City Council following the public hearing referenced in Section 5 of this ordinance.

Section 7. Severability. If any one or more section, subsection, or sentence of this ordinance or its application to any person or circumstance is held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this ordinance or its application to other persons and circumstances.

Section 8. Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

Section 9. Declaration of Emergency and Effective Date. The City Council hereby finds and declares that there is a significant potential for battery energy storage facilities to create substantial adverse effects on the public health, safety, and welfare if not addressed by adequate and appropriate development regulations, and that, therefore, an emergency exists which necessitates that this ordinance become effective immediately in order to preserve the public health, safety, and welfare. Pursuant to *Matson v. Clark County Board of Commissioners*, 79 Wn. App. 641, 904 P.2d 317 (1995), non-exhaustive underlying facts necessary to support this emergency declaration are included in the recitals above, all of which are adopted by reference as findings of fact as if fully set forth herein. If approved by a majority-plus-one of the City Council, this ordinance shall become effective immediately upon passage. If approved by only a simple majority, this ordinance shall become effective five days after publication as provided by law. The City Clerk shall publish a summary of this ordinance at the earliest possible publication date.

ADOPTED BY A MAJORITY-PLUS-ONE OF THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 15TH DAY OF FEBRUARY, 2024.

CITY OF BLACK DIAMOND



Carol Benson, Mayor

ATTEST/AUTHENTICATED:



Brenda L. Martinez, City Clerk

Approved as to form:

David A. Linehan, City Attorney

Filed with the City Clerk: 2/16/24
Passed by the City Council: 2/15/24
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