



CITY OF BLACK DIAMOND

October 13, 2022 Regular Work Session and Town Hall Meeting Agendas
Council Chambers, 25510 Lawson Street, Black Diamond, WA 98010

THIS IS OFFERED AS A HYBRID MEETING AND MAY BE ATTENDED IN PERSON AT THE ABOVE NOTED ADDRESS OR BY JOINING VIRTUAL/TELEPHONICALLY. CALL IN AND JOINING INFORMATION FOLLOWS:

Zoom link to join meeting:

<https://zoom.us/j/4454477047?pwd=eGxRY3ZEeU14SVM2cGRBcUxCSjdmZz09>

(Note: You do not need a web cam to join the meeting, but you will need audio to hear the proceedings.)

Meeting ID: 445 447 7047

Password: Council

Telephone dial in options:

+1 253 215 8782 US (Tacoma)

+1 206 337 9723 US (Seattle)

Meeting ID: 445 447 7047

Password: 426953 (phone in only)

REGULAR WORK SESSION AGENDA

6:00 P.M. – CALL TO ORDER, FLAG SALUTE, ROLL CALL

- 1) Discussion Regarding Fire Impact Fees
- 2) Discussion Regarding Boating Regulations

ADJOURNMENT

TOWN HALL MEETING AGENDA

7:00 P.M. – CALL TO ORDER, FLAG SALUTE, ROLL CALL

- 1) Open Mic – Please limit your comments to 10 minutes

ADJOURNMENT

Current Black Diamond Municipal Code Provisions

Governing Water Safety – BDMC Chapter 8.24

8.24.220 - Lake Sawyer restrictions.

- A. Noise Restrictions. It is a civil infraction to use or operate any vessel powered by motor power on Lake Sawyer unless the vessel propulsion system is: (1) a water cooled outboard engine of stock manufacture or a stock manufactured inboard engine with an outboard drive unit (inboard-outboards) which vents all exhaust gases through the lower drive unit in conjunction with cooling water and/or vents at a point on the drive unit which is under water at all times; or (2) is a water cooled direct drive inboard engine or other type of engine equipped with a muffler, silencer or other device or mechanism of sufficient size and capacity to effectively muffle and reduce noise similar to that of outboards and inboard/outboards. This includes both propeller and jet propulsion vessel.
- B. Allowable Speeding and Hours. Vessels may exceed the speed limit of five miles per hour between the hours of two p.m. and seven p.m. on Mondays through Fridays and from eleven a.m. to three p.m. on Saturdays, Sundays and holidays. The maximum speed allowable during "speeding hours" shall be thirty-six miles per hour. Vessels operating in excess of five miles per hour with or without someone in tow shall not operate between buoys and shorelines and within one hundred feet from other craft or persons and shall proceed in a "counterclockwise" direction.
- C. Operation Inside Buoy Areas. All motorized vessels shall operate at a no wake speed on shoreline side of buoys areas at all times.
- D. Operation of Vessels. No vessel shall be operated in a manner so as to create tight circles in the water, or "donuts."
- E. Water Skiing.
 - 1. No vessel which has in tow a person on water skis, aquaplane, surfboard or similar contrivance shall be operated or propelled in the waters of the city unless such vessel is occupied by at least two competent persons. (Competent shall be defined as a person responsible and capable of alerting the driver of the boat of any activities that

require the attention of the driver.) The primary responsibility of the driver is to operate the vessel and the other person will act as an observer of the person in tow. It is the observer's responsibility to immediately inform the driver when a person under tow falls or is otherwise disengaged from the tow boat and to immediately raise a signal flag that is at least twelve inches square of bright orange or red material and mounted on a twenty-four inch or longer rod. Violation of this subsection shall constitute a misdemeanor.

2. No operator of a vessel shall have in tow a person on water skis, aquaplane, knee-board, surfboard or similar contrivance before sunrise or after sunset. Violation of this subsection shall constitute a civil infraction.
 3. All persons being towed by vessel shall wear personal flotation devices that are approved by the United States Coast Guard. Violation of this subsection shall constitute a civil infraction.
- F. Required distance from power craft to swimmers and row boats. It is unlawful for any motor powered craft to be operated while the propeller is engaged within fifty feet of any swimmer or any row boat, canoe, or other water conveyances on any lake within the city.
- G. Marine Patrol Actions. Marine patrol officers shall have the discretion, depending on the volume of vessels on the lake, to require all boats not staying within the flow of traffic to move their activity to an area between the shoreline and the buoys described in subsection C of this section.
- H. Aircraft on the Water. All vessels shall keep clear of aircraft landing within any area now or hereafter set aside by law for such purpose. Aircraft on the water shall keep clear of all vessels and avoid impeding their navigation.
- I. Overnight anchorage or moorage of vessels, between the hours of dusk and dawn, is prohibited except when tied to a privately-owned pier, dock, or mooring buoy.
- J. An unoccupied vessel may only be anchored or moored to a city pier or dock while the vessel's trailer is being parked or retrieved.

- K. Vessels shall not be used for residential purposes, or living on the vessel, while anchored or moored on the lake, even for short-term or temporary periods regardless of whether the vessel is a primary or secondary residence.
- L. Posting. The city shall post a complete copy of this section at all public and commercial access areas to Lake Sawyer.
- M. Kayaks, canoes, stand-up paddleboards, and other paddlecraft are required to stay between the shoreline and the buoys during the speeding hours established in subsection B of this section, when powered motor-crafts are present.

Potential options for new wake surfing regulations on Lake Sawyer:

- 1. Ban completely
- 2. Allow, but restrict to certain areas of the lake or to certain distances from the shoreline, and/or prohibit "excessive wakes"
- 3. Allow with no restrictions but for existing general limits on prudent boat operations and requirements to avoid negligent or reckless endangerment of other persons or property

Various examples of these approaches from other jurisdictions are described on the following pages.

Kootenai County, Idaho (Coeur D'Alene area)

The County Board of Commissions adopted a Resolution in 2020 that modified the County's Parks and Waterways Ordinance to establish a "no-excessive wake zone" in two distinct areas of the County:

- (1) along the Spokane River and on Fernan and Lower Twin Lakes, where the "no-excessive wake zone" applies between the 100-foot no-wake zone and a distance of 150 feet from the shoreline or any dock, pier, or other waterfront structure (i.e., between 100 and 150 feet from the shoreline); and
- (2) for all other Kootenai County public waters, where the "no-excessive wake zone" applies between the 200-foot no-wake zone and a distance of 300 feet from the shoreline or any dock, pier, or other waterfront structure (i.e., between 200 and 300 feet from the shoreline).

The Resolution defines "excessive wake" as follows:

- (a) the wave resulting from operating a vessel at the speed at which boats create the most wake, moving quickly and displacing the most water, i.e. plowing;
- (b) the wave resulting from operating a vessel in an artificially bow-high manner to increase or enhance a wake, including wake enhancement by use of ballast, mechanical hydrofoils, or uneven loading;
- (c) the operating at transition speed, i.e. operating a vessel at greater than no-wake speed, but not fast enough to cause the vessel to plane;
- (d) or the wave resulting from operating a vessel to cause water to lap onto or over a dock, pier, or other lawfully permitted encroachment.

Relatedly, the County Parks and Waterways Ordinance defines "wake" as "the visible track of turbulence created by the movement of a vessel through the water." Note that the BDMC does not currently define "wake."

City of Bellevue

Bellevue's Harbor Code contains several regulations that could be applied to wake boats or wake surfing:

BCC 12.04.085 completely prohibits the creation of a wake "within 100 yards of any shoreline, bridge, or shore installation," except as specifically allowed in the section of code that applies to "water skiing." Essentially, this code section establishes a "no wake zone" that extends 100 yards/300 feet into Lake Washington.

"Wake" is defined as "the visible trail of turbulence which produces whitewater at the bow and/or stern of a watercraft moving through the water." BCC 12.04.020.

The "water skiing" section of the Bellevue code prohibits water skiing or otherwise towing or assisting "anyone on water skis, aquaplane, surfboard or similar contrivance within 100 yards of shoreline, pier, restricted area or shore installations." BCC 12.04.230.B. Although this code section does not mention "wake surfing" specifically, the reference to "assisting" anyone using a "surfboard or other similar contrivance" would seem to cover wake boarding and wake surfing. The Bellevue code section pertaining to water skiing is quite similar to the BDMC 8.24.220.E (which also governs "water skiing" on Lake Sawyer).

One additional regulation that Bellevue might be able to apply to excessive or dangerous wakes is subsection E of the water skiing code section. BCC 12.04.230.E (Prudent Operation of Boat) mandates that all watercraft towing or otherwise assisting a person on skis, surfboards or "similar contrivances" shall be operated in a "careful and prudent manner." While not very precise, this prohibition might allow marine patrol to cite or warn wake boat operators who are creating unnecessary turbulence or causing waves that might damage nearby shorelines, docks, or other property.

In addition to the "no wake zone" and water skiing regulations referenced above, BCC 12.04.090 prohibits operating any watercraft or vessel "in a manner which shall unreasonably interfere with other watercraft or vessels or with free and proper navigation of the waterways of the city." This code section defines "unreasonable or unnecessary interference" to include "operating any watercraft in such a manner as to unjustifiably or unnecessarily annoy, frighten or endanger the occupants of any other watercraft; or throwing up a wake when approaching another watercraft

or other property in or adjacent to the harbor if unreasonable under the prevailing circumstances." (Emphasis added.) Note that this code section does not establish objective distances or buffers between a watercraft and other persons or vessels, but gives law enforcement some latitude in determining what degree of wake would be "unreasonable under the prevailing circumstances." By contrast, the Black Diamond Municipal Code relies on more specific rules of conduct and distance-defined areas in which certain conduct is prohibited.

However, the BDMC also incorporates certain state boating laws that similarly make it illegal to operate a boat in a negligent or reckless manner, much like section 12.04.090 of the Bellevue City Code quoted above. See BDMC 8.24.200 (adopting RCW 79A.60.030 and .040).

Oregon

The Oregon State Legislature has recently adopted new legislation amending its water sports regulations to define “wake surfing” and to create a new zone on the Willamette River where wake surfing is specifically prohibited:

New Definition:

“Wake surfing” means the activity of propelling an individual forward on equipment similar to a surfboard, using a boat’s wake. The person may be holding a rope or free riding. Equipment used in this activity may include but is not limited to wake surf boards, wake boards, stand up paddleboards and hydrofoils.

New Restrictions:

Within the Newberg Pool Congested Zone, a person may not:

- (a) Use devices or individuals to increase wakes; and
- (b) Engage in wake surfing.

The “Newberg Pool Congested Zone” is defined as the portion of the Willamette River beginning at Willamette Falls and ending at the mouth of the Yamhill River (approximately 30 miles).

Finally, the legislation requires the State Marine Board to undertake studies to examine whether increasing the maximum allowed loading weights of motorboats may have an adverse effect on waters, beds, and banks of the state, or adversely affect aquatic and shoreline habitats.

Presumably these studies might inform whether adding ballast to boats for the purpose of creating larger wakes needs to be further regulated to protect marine environments.

Indiana

The Indiana State Legislature is considering a bill that defines wake surfing and wake boarding, restricts such activities to daylight hours, adopts tighter regulations on lakes between 70-300 acres in size, prohibits wake surfing behind a boat with an exposed propeller, and empowers lakefront property owners to petition the state Natural Resources Commission to adopt additional regulations if at least half of the waterfront property owners participate.

Definitions:

Wake boarding means: (1) to use a short board with or without footbindings on which a rider is towed by a motorboat across a wake; or (2) to operate a motorboat that creates a wake that tows or is intended to tow a person who uses a short board with or without footbindings on which they are towed by the motorboat across the boat's wake.

Wake surfing means: (1) to surf a wake, regardless of whether the person is being pulled by a tow rope attached to a motorboat that is producing the wake; or (2) to operate a motorboat that creates a wake that is or is intended to be surfed by another person.

Regulations:

A person may not operate a motorboat on a public freshwater lake while engaging in wake boarding or wake surfing during the period between sunset and sunrise.

A person may not operate a motorboat on a small lake (70-300 acres) while engaging in wake boarding or wake surfing unless it's during the time of day that applicable speed limit exemption applies on the lake.

Additional restrictions may be imposed on wake boarding or wake surfing if a majority of waterfront owners on the lake petition the commission to change the days of the week, the times of day, or distances from the shore that wake boarding or wake surfing is allowed, or even to ban them altogether.

Prohibits operating a motorboat with an outboard engine or an outdrive unit with a propeller that extends past the boat's transom or swim platform for the purpose of wake surfing.

Minnesota

The Minnesota State Legislature has considered legislation to define and regulate wake surfing:

New Definitions:

"Wake surfer" means a person who wake surfs.

"Wake surf" means: (1) to surf a wake, regardless of whether the surfer is being pulled by a tow rope attached to the watercraft that is producing the wake; or (2) to operate a boat that creates a wake that is, or is intended to be, surfed by another person.

(Note: These definitions are quite similar to the proposed Indiana legislation, indicating they were probably drafted in cooperation with the industry association lobbyists).

New Wake Surfing Regulations:

Observer or mirror required. A person may not wake surf on waters of this state or operate a watercraft on waters of this state and create a wake for a wake surfer or tow while towing a person on water skis, an aquaplane, a surfboard, a saucer, or a similar device unless:

- (1) there is another person in the watercraft in addition to the operator who is in a position to continually observe the person being towed; or
- (2) the boat is equipped with a mirror providing the operator a wide field of vision to the rear.

Distance from shore. On waters of this state, a person may not wake surf at greater than slow-no wake speed within 200 feet of a:

- (1) shoreline;
- (2) dock;
- (3) swimmer;
- (4) raft used for swimming or diving; or

(5) moored, anchored, or nonmotorized watercraft.

Requirements for wake surfing. A person may not wake surf unless the watercraft used to wake surf is powered with a propeller that is forward of the watercraft's transom or swim platform or powered by a jet drive.

It appears that the Minnesota Legislature has (to date) adopted only the Observer/Mirror requirement above, and prohibited wake surfing between sunset and sunrise. It does not appear that Minnesota has adopted the Distance from Shore and Propeller restrictions (yet).

Virginia

A bill was introduced in the Virginia state house in 2021 that would prohibit wake surfing within 200 feet of a dock, pier, boathouse, boat ramp, or other person in the water, on Smith Mountain Lake. Status of the legislation is unknown.

New Hampshire

A bill in the State of New Hampshire has recently been introduced that would specifically define what constitutes a "wake boat":

"Wake boat" means any boat that is equipped with ballast tanks, bags, compartments, containers, plumbing, or similar devices or systems that are designed to alter or enhance the characteristics of the boat's wake, and is also known as a "ballast boat."

It is unclear what the purpose of the new definition is except that it would be useful in restricting the activities of "wake boats" if there is a desire to regulate their operations separately from other types of motorboats.

Black Diamond could consider adopting a similar definition if the intent is to limit new regulations to specific types of boats rather than to types of conduct more generally.

MEMO

TO: Black Diamond City Council
Mayor Benson

DATE: October 11, 2022

RE: Annual adjustment to Fire Impact Fees

Black Diamond's fire impact fee code authorizes the city's Community Development Director to increase the adopted fire impact fee annually by the amount of the Construction Cost Index (CCI) change in the Seattle metro area.

The city has not taken these annual increases since the fire impact fees were first adopted in Sept. 2012. City staff would now like to begin capturing this additional fee revenue beginning in January 2023 as the municipal code allows. With this in mind, Public Works Director Scott Hanis has collected the CCI data going back to 2012 to assist with calculating the adjustment.

Beyond merely calculating the new fees, there is a policy question for the Council's input regarding whether to capture only the increase for 2022 (effective 2023) or whether the rates should be adjusted to account for all the increases that could have been taken as far back as 2013 (as the code would have allowed).

To inform the Council's considerations, we asked Martin Chaw of FCS Group (who is currently assisting the City with related fiscal analysis) to calculate the adjusted 2023 fire impact fee if (1) only the most recent CCI increase were taken for 2022, or (2) all prior years' increases were taken going back to 2013, understanding this second number could be quite large given 10 years of inflation. We also asked Chief Smith of Mountainview Fire District to provide comparative fire impact fee data from other jurisdictions in the region.

Included with this memo are the following documents:

- BDMC 3.50.190
- FCS Fire Impact Fee Adjustment Options for 2023
- Comparison of Fire Impact Fees in King County area

FIRE IMPACT FEE ADJUSTMENTS

3.50.190 - Review and adjustment of rates.

- A. The fees and rates set forth in the rate study may be reviewed and adjusted by the city council as it deems necessary and appropriate in conjunction with the annual budget process so that adjustments, if any, will be effective at the first of the calendar year subsequent to budget period under review.
- B. Annually, and prior to the first day of January, the community development director shall calculate and adjust the impact fees by the same percentage change as in the most recent annual change of the Construction Cost Index published in the Engineering News Record. A copy of the adjusted impact fee rates shall be provided to the city council, and kept on file with the city clerk, but the adjusted rates shall become effective without further council review.

PROPOSED FIRE IMPACT FEE ADJUSTMENT OPTIONS FOR 2023

FIRE IMPACT FEES	Residential	SFR with Fire Sprinkler System credit	Non-Res
Current Fee (BDMC 3.50.100.E)	\$1,783.13	\$1,450.40	\$2.29

TABLE 1. Adjust for Inflation (all at once)	Residential	SFR with Fire Sprinkler System credit	Non-Res
Current fee	\$1,783.13	\$1,450.40	\$2.29
Revised fee (inflation Jan2022-Sep2022 only)	\$1,975.35	\$1,606.75	\$2.54
Revised fee (inflation Jan2013-Sep2022)	\$2,878.15	\$2,341.09	\$3.70

TABLE 2. Two-Year Phase-in strategy (Inflation Jan2013-Sep2022)	Residential	SFR with Fire Sprinkler System credit	Non-Res
Current fee	\$1,783.13	\$1,450.40	\$2.29
Revised fee (2023)	\$2,330.64	\$1,895.75	\$2.99
Revised fee (2024)	\$2,878.15	\$2,341.09	\$3.70

TABLE 3. Three-Year Phase-in strategy (Inflation Jan2013-Sep2022)	Residential	SFR with Fire Sprinkler System credit	Non-Res
Current fee	\$1,783.13	\$1,450.40	\$2.29
Revised fee (2023)	\$2,144.49	\$1,744.33	\$2.75
Revised fee (2024)	\$2,516.79	\$2,047.16	\$3.23
Revised fee (2025)	\$2,878.15	\$2,341.09	\$3.70

TABLE 4. Seattle Construction Cost Index	Inflation index (CCI)
Jan2013	9,418.27
Jan2022	13,722.83
Sep2022	15,202.41 a.
Inflation Jan2022-Sep2022	10.7800%
Inflation Sep2012-Sep2022	61.4100%

a. Sep2022 is used as surrogate for 2022 annual inflation This could be updated through Dec2022 if the City has not taken action by then.

- Table 1 presents the calculated and updated fees for Jan2022-Sep2022 inflation only, and for Jan2013-Sep2022 historical inflation.
- Recognizing the significant impact 10-years of historical inflation, the City could consider phasing-into the latter fee over a 2-year or 3-year period, as shown in Tables 2 and 3, respectively.
- Table 4 includes the indices and calculated inflation for the periods indicated.

This study shows BD is about \$43.00 less than median for single family, about .54 more per sq ft for commercial and about \$95 less than median for multi Family (per unit).

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