

AMENDED BY MAJORITY COUNCIL MEMBERS

BLACK DIAMOND CITY COUNCIL MINUTES

June 2, 2016

Council Chamber, 25510 Lawson Street, Black Diamond, Washington

CALL TO ORDER, FLAG SALUTE:

Mayor Benson called the regular meeting to order at 7:00 p.m. and led us all in the Flag Salute.

ROLL CALL:

PRESENT: Councilmembers Deady, Morgan, Edelman, Weber and Pepper.

ABSENT: None

Staff present were: Seth Boettcher, Public Works Director; Barbara Kincaid, Community Development Director; Jamey Kiblinger, Police Chief; Yvonne Ward, Emergency City Attorney and Brenda L. Martinez, City Clerk.

APPOINTMENTS, ANNOUNCEMENTS, PROCLAMATIONS AND PRESENTATIONS: None

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady that the City of Black Diamond hereby censure for the reasons set forth in the handout Councilmember Erika Morgan for violation of her duty to the citizens of Black Diamond to obey all laws; for willful interference with government operations; for dereliction of her duty; for violation of the oath of office; and violation of the Open Public Meetings Act.

A point of order was called by Councilmember Pepper that this item is not on the agenda.

Mayor Benson immediately called for the vote without asking if there was any debate.

VOTE: Motion failed ~~There was a tie vote of 2-3 2 (Edelman, Deady, Weber, Pepper).~~ Mayor Benson broke the tie with an affirmative vote. Motion **passed** 3-2 (Weber, Pepper).

Point of order was called by Councilmember Pepper. Mayor Benson ruled her out of order.

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady that the City of Black Diamond hereby censure for the reasons set forth in the handout Councilmember Brian Weber for violation of his duty to the citizens of Black Diamond to obey all laws; for willful interference with government operations; for dereliction of his duty; for violation of the oath of office; and violation of the Open Public Meetings Act.

VOTE: -Motion Failed ~~There was a tie vote of 2- 2- 3 2 (Edleman, Deady)(Morgan, Pepper).~~ Mayor Benson broke the tie with an affirmative vote. Motion **passed** 3-2 (Morgan, Pepper).

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Point of order was called by Councilmember Weber. Mayor Benson said, "Out of order."

Point of order was called by Councilmember Pepper stating this item is not on the agenda. Mayor Benson ruled her out of order.

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady that the City of Black Diamond hereby censure for the reasons set forth in the handout Councilmember Pat Pepper for violation of her duty to the citizens of Black Diamond to obey all laws; for willful interference with government operations; for dereliction of her duty; for violation of the oath of office; and violation of the Open Public Meetings Act.

VOTE: Motion Failed ~~There was a tie vote of 2-3-2 (Edleman, Deady)~~ (Morgan, Weber). Mayor Benson broke the tie with an affirmative vote. Motion **passed** 3-2 (Morgan, Weber).

Council member Pepper raised her arm and requested the floor. Mayor Benson did not recognize Councilmember Pepper.

Council member Pepper made a point of order.

Mayor Benson called Councilmember Pepper "out of order."

Council member Pepper raised her arm and requested the floor. Mayor Benson did not recognize Councilmember Pepper.

Mayor Benson said "out of order" and that the Council member "will be removed if you interrupt at all. You have not been recognized."

Councilmember Edelman read the entire censure document into the record, ~~which are~~ attached and incorporated into the minutes.

City Attorney Ward explained how the deciding vote was cast on the censures. She distributed to Council two reports she prepared. The first issue she addressed was the Committees under Resolution 16-1069 ~~(attached)~~. She noted it up to the Mayor to decide whether to enforce the committee structure as proposed in Resolution 16-1069. She stated her recommendation which is also consistent with the recommendations of the prior City Attorney is that it's illegal and that you would have a duty to not do so, but the choice is the Mayor's.

Mayor Benson noted she already looked at this option and has cancelled any further committee meetings set up under 16-1069.

~~City~~ Attorney Ward discussed the second issue of Resolution 16-1069. She noted stepping in as emergency City Attorney with a limited purpose. However, it was impossible to maintain city business with the continuing conflict of the Council rules. She discussed emails sent to her by private citizens and from the City's server. She continued to discuss her findings from these emails. She also noted that under the OPMA (Open Public Meetings Act) actions taken in violation of that law are null and void. In closing, she noted her conclusion is that Resolution No. 16-1069 is illegal on three basis which is outlined in her findings and conclusions (attached).

Mayor Benson stated she is not going to enforce 16-1069 and should revert to the old rules

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that have never been challenged.

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City Attorney Ward also mentioned that all of the Mayor's decisions were done on the advice from legal counsel as well as Councilmembers Deady and Edelman not attending the committee meetings.

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At 7:27 p.m. Mayor Benson recessed the meeting for an executive session as authorized by RCW 42.30.140(4) to discuss collecting bargaining. The session is expected to last 15 minutes. She reminded Councilmembers to take nothing with them to the session.

Mayor Benson called the meeting back to order at 7:42 p.m.

CONSENT AGENDA:

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to accept the consent agenda. Motion **passed** with all voting in favor.

The Consent Agenda was approved as follows:

- 1) **Claim Checks** – May 19, 2016 - No. 43513 through No.43568 and EFTs in the amount of \$788,969.40 and June 3, 2016 – No. 43569 through No. 43604 (void 43473) and EFTs in the amount of \$67,559.11
- 2) **Payroll** – April 29, 2016 - No. 18819 through 18837 and ACH Payments in the amount of \$260,911.07 and May 31, 2016 – No. 19137 through No 19155 (void 19148) and ACH payments in the amount of \$258,221.20
- 3) **Minutes** – Joint Special Council/Planning Commission Meeting of April 12, 2016

PUBLIC COMMENTS:

Kristen Bryant, Bellevue spoke to Council.

Attorney Yvonne Ward spoke to Council.

Angelina Taylor, Port Orchard spoke to Council.

Carol Lynn Harp, Black Diamond spoke to Council.

Tom Ekberg, Black Diamond spoke to Council.

Attorney Yvonne Ward spoke to Council.

Darrel Bryant, Black Diamond spoke to Council.

Bob Edelman, Black Diamond spoke to Council.

Peter Keleman, 101 Pines spoke to Council.

Judy Carrie, Auburn spoke to Council.

Brian Derdowski, Issaquah spoke to Council.

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Brock Deady, Black Diamond spoke to Council.

Matthew House, Puyallup, representative of Teamsters 117 spoke to Council.

Robbin Taylor, Black Diamond spoke to Council.

Attorney Ward, spoke to Council.

Councilmember Weber asked for clarification from Ms. Taylor; if she said Councilmember Pepper and Weber went to Talmadge? He wanted to clarify that he has not spoken with Talmadge, Fitzpatrick or any other law firm.

PUBLIC HEARINGS:

4) AB16-034 – 2017-2022 Six Year Transportation Improvement Plan

Mr. Boettcher discussed the changes in the Six Year TIP from last year. He noted the big change is adding all the capacity adding projects under the recommendation of former City Attorney Carol Morris. He also noted adding more projects in the maintenance category and this is more than can be accomplished and it was to show the needs of our streets and also for TIB to see which projects might rate the best. He discussed the map outlining the projects that have been accomplished the past six years. He noted tonight is to take public comments and a workstudy will be held next week. He noted minor edits or clarifications the plan will be prepared for adoption at the June 16 meeting. If there are substantive changes there might need to be another public hearing.

Mayor Benson opened the public hearing at 8:27 p.m.

Kristen Bryant, Bellevue noted looking at the information and finds it useful to find a summary of all the projects. She discussed it would have been nice to see what the projects are in detail and in the funding area it would be nice to see the breakdown. Her request is how more information regarding the plan can be available. She discussed one of the projects which could have implications for traffic in the future, however, and requests to make additional comments once the additional information is provided.

Brian Derdowski, Issaquah/Bellevue commented on this hearing taking into account what is happening with the update of the Comp Plan and those two should be intergrated. He noted a way to do this is to hold the public hearing open and can be done by a Councilmember making a motion to hold the hearing open and written comments can be provided for additional detail to inform the process.

Morgan Franz~~s~~, Black Diamond noted it being exciting to see the new things that are going to happen. She discussed the two intersections that are shown on the map and her hope is in the future it could be one consolidated intersection instead of two right next to each other. They are number 8 and 11.

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Public Works Director Boettcher commented that staff is aware of the two intersections and an interim solution is signals to allow better traffic movement. Ultimately in the Comprehensive Plan the City is planning on realigning the intersections to an even greater degree of separation.

Judy Carrier, Auburn noted on looking at the maps and found a problem on the website and she couldn't find some of the information on the website and would like some time to study this more thoroughly. She noted it being encouraging to see the repair work as a priority in the top projects.

Mayor Benson announced the public hearing will be left open until the June 16 regular meeting. She also noted getting written comments from TAT and Peter Rimbos.

Mayor Benson called a short recess at 8:35 p.m.

The meeting was called back to order at 8:40 p.m.

UNFINISHED BUSINESS:

At the same time, Mayor Benson began to announced the next item on the agenda is a Claim Check for DKS, and Councilmember Pepper raised her arm and interrupted and asked for requested the floor.

Mayor Benson ruled her out of order.

Mayor Benson said, "You are out of order. You are out of order, you are out of order. I will have you removed if you interrupt one more time."

Councilor Morgan requested the floor.

Mayor Benson responded, "yes?"

Councilor Morgan stated, "I appeal the decision of the mayor."

Councilmember Morgan appealed the decision of the chair. Mayor Benson ruled her out of order and noted if they interrupt again they will be removed from the meeting.

5) Claim Check-March 7, 2016 – No. 43294 DKS Associates in the amount of \$10,000

Mayor Benson stated, "Next item on the agenda is the claim check from March 7. Council member Weber?"

Councilor Morgan repeated, "I appeal the decision of the mayor."

Mayor Benson stated, "You're out of order. You interrupt one more time and you will be leaving the meeting. One more time. Either one of you."

Mayor Benson stated, "The next item on the agenda is the claim check from March 7 DKS Associates in amount of \$10,000. Council member Weber?"

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A **motion** was made by Councilmember Weber to table this item to the next regular scheduled Council meeting once we get new legal representation.

~~Motion died due to lack of a second.~~

There was Council discussion on this item.

There was discussion that the motion by Council member Weber was not seconded.

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to approve the \$10,000 DKS the payment.

VOTE: Motion failed 3-2 (Weber, Morgan, Pepper).

Councilmember Pepper requested the floor.

Mayor Benson began to announce the next item on the agenda.

Councilmember Pepper stated, "I appeal the decision of the chair."

Point of order by Councilmember Weber stating the Clerk is the parliamentarian.

Mayor Benson stated, "Would you, would you please remove Ms. Pepper?"

Councilor Pepper left the meeting.

Councilor Morgan left the meeting.

Councilor Weber left the meeting.

Mayor Benson called a recess at 8:45 p.m.

The meeting was called back to order at 8:50 p.m.

There was no longer a quorum for the meeting.

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~~City Attorney Ward stated that Councilmembers Morgan, Weber and Pepper did not come back to the meeting. Citizens stated seeing Councilmembers Pepper and Morgan leave and Councilmember Weber was in his car.~~

~~Under RCW42.30.090 (OPMA) Attorney Ward stated that less than a quorum can recess the meeting to a date, time, and place certain. She noted this is an option.~~

~~***Due to no quorum no action can be taken; the following is a summary.***~~

~~Councilmember Edelman noted the issue here is the work of the City is not being done. She referred to items that are still in committee, and stands by her censure for all three Councilmembers (Weber, Morgan and Pepper).~~

~~There was discussion around excused absences.~~

~~Mayor Benson commented on the May 25 absence of Councilmember Morgan and finding that absence not excused and also finding Councilmembers are not excused from this meeting.~~

NEW BUSINESS: ~~No further business was conducted due to lack of a quorum.~~

DEPARTMENT REPORTS: ~~None~~

MAYOR'S REPORT:

~~Mayor Benson announced she has selected an attorney who starts tomorrow and the law firm is Kenyon Disend. She noted this firm having a lot of municipal attorney experience. She noted this is being done at her authority and at the next meeting she will bring forward an open ended contract to the end of the year to be approved by Council. She also discussed receiving a PDR from Robbin Taylor for all the papers on the dais and Councilmembers not leaving those documents.~~

COUNCIL REPORTS:

~~Councilmember Edelman reported that she attended the Boot and Badges event and what a special event it is. She commended herself and Deady supporting the Mayor and staff. She also discussed not supporting the committee meetings and meeting with staff on issues.~~

~~Councilmember Deady reported attending the Boots and Badges event and kudos to Sergeant Lynch for putting this together. She noted attending the Memorial Day Ceremony at the Cemetery. She also noted needing a City Attorney with municipal~~

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~~attorney experience. She commented the firm of Kenyon Disend is a full service firm and an excellent choice for the City.~~

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~~ATTORNEY REPORT:~~

~~Attorney Ward discussed legal services for the City and believes Kenyon Disend is a great choice and noted the City will be in very good hands. She added her role is more of an emergency room doctor.~~


~~Councilmember Edelman thanked Ms. Ward for helping the City out and noted her opinions are valuable and based on the law.~~

~~PUBLIC COMMENTS: None~~

~~EXECUTIVE SESSION: None~~

~~ADJOURNMENT:~~

ATTEST:



Carol Benson, Mayor



Brenda L. Martinez, City Clerk