

**BLACK DIAMOND CITY COUNCIL MINUTES**  
**February 4, 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 lead us all in the Flag Salute.

**ROLL CALL:**

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

**ABSENT:** None

Staff present were: Andrew Williamson, MDRT/Economic Development; Seth Boettcher, Public Works Director; Jamey Kiblinger, Police Chief; Carol Morris, City Attorney and Brenda L. Martinez, City Clerk.

**APPOINTMENTS, ANNOUNCEMENTS, PROCLAMATIONS AND PRESENTATIONS: None**

**CONSENT AGENDA:**

A **motion** was made by Councilmember Weber and **seconded** by Councilmember Morgan to adopt the Consent Agenda. Motion **passed** with all voting in favor (5-0). The Consent Agenda was approved as follows:

- 1) **Claim Checks** - February 4, 2016 - No. 43136 through No.43186 (void 43182) and EFTs in the amount of \$64,879.99

**PUBLIC COMMENTS:**

Judy Goodwin, Black Diamond thanked Mayor Benson and the Council for the opportunity to speak. She stated feeling angry, frustrated and saddened by the premature passage of the resolution to change how Black Diamond's City government works. She discussed the speed at which the changes were done did not allow the citizens to study these changes and reflect on their implications. She commented on Mayor Gordon and the changes he made while in office which cost the city over \$200,000. She stated the following words of wisdom "No one is better suited for places of authority than those who can submit to authority". She commented on being reminded that we should love our neighbors as we love ourselves and stated she was going to set her anger aside tonight and pray for all the Councilmembers.

George McPherson, Black Diamond read his written comments into the record which are attached and incorporated into the minutes. He further discussed articles that were written in the newspaper and wondered if staff was ever contacted about the new rules. He also wondered what the additional costs would be regarding the new format for the Council Committees and the impacts this will have for staff and asked who will be directing staff.

Robbin Taylor, Black Diamond read her written comments into the record which are attached and incorporated into the minutes.

Brian Derdowski, Issaquah commented on serving on the King County Council and working with the Council to see how he could help them do a better job. He read a memo from Larry Gossett's Chief of Staff Cindy Domingo outlining the King County Council's process for Council Committees. He referred to minutes from the Transportation Committee of the King County Council and noted this being proof through the minutes that this quorum type of committee structure is correct and can be done. He stated that a number of jurisdictions do this and gave an example of the City of Spokane as having the same practice of having quorum committees and stressed they are not illegal meetings.

Kristen Bryant, Bellevue stated being a part of the group Save Black Diamond. She commented on being happy with the new approach as this is a welcomed change. She also commented that the rules seem very reasonable to her and noted that they are going to be improved. In closing she stated that she along with others are looking forward to improving the City's traffic and environmental ordinances.

Patrick Nelson, Black Diamond commented on feeling as if he has been spit in the face. He stated residents are very disheartened with what Councilmembers Pepper, Morgan and Weber are doing and feels that his vote has been taken away. He stated that Save Black Diamond's agenda is to stop growth – and noted that is never going to happen. He asked that Council either change their mind or step down from their position as they are wasting everyone's time.

Bob Edelman, Black Diamond commented on Black Diamond not being the King County Council - Black Diamond is a City of roughly 4,000 people. He stated that King County has a large number of issues they deal with weekly and that is far more than here in Black Diamond. He discussed the new process and feels things can be discussed at the Council meetings and acted upon at that time.

City Attorney Morris discussed sending to the Council a copy of the Attorney General opinion #9 that addresses the issue of the Council Committee quorum that was proposed by the Council's rules. She read an excerpt from this opinion which is attached and incorporated into the minutes. She further discussed how the meeting notifications need to be noticed.

Councilmember Pepper read into the record an excerpt from an opinion that agrees with some things said at the meeting. She stated the opinion was prepared by a law firm and

would be happy to distribute the entire opinion to anyone who wants a copy. The complete legal opinion on the Open Public Meetings Act is attached and incorporated into the minutes.

Councilmember Edelman shared with Council the research she has done over the past few weeks on the Council Committee issue. She noted that in King County they have went from 11 Councilmembers down to nine and the City of Black Diamond has five. She compared King County Council's committees with Black Diamond's and discussed the King County Council's February 1 agenda that had 36 items of legislation on it and the results of actions taken at that meeting. She noted that tonight's agenda for Black Diamond has only three resolutions. She also noted that all of King County's committee meetings are held during regular business hours.

**PUBLIC HEARINGS: None**

**UNFINISHED BUSINESS: None**

**NEW BUSINESS:**

**Resolution No. 16-1073, awarding Contract to Iversen and Sons for Downtown Watermain Project**

Public Works Director Boettcher reported that this project has been in the works for quite some time. He discussed the following items on the project: 1) planning for the project, 2) benefits of the project, 3) where the project is, 4) timing, and 5) project budget and funding which includes REET funds. He asked Councilmember Weber if he called the agency in regards to this project as someone named Brian who said they were from the City called with some concerns as they felt this project was benefiting developers. Councilmember Weber commented he did not call any agency.

Councilmember Morgan asked if the REET funds from Crown Development purchase are in this amount. Mayor Benson commented that those funds are not here yet. She also commented on noticing gaps on the maps and wondered if those gaps are where breaks have happened in the past. In addition she noted being concerned with sink holes in that area and with the early spring time wondered if there is any contingency for wet weather. Mr. Boettcher noted there are some missing links within the water system and explained where those missing links are. He also noted that the City can give extension days due to bad weather.

Councilmember Weber commented that normally an item with this budget would go to the Budget, Finance and Administration committee he chairs. He discussed the timeline and believes the recommendation is reasonable. He asked why the loan request from the State Revolving Fund was denied for this project. Mr. Boettcher reported that those funds are primarily set aside for upgrade projects and this project was for repair and maintenance and should be funded by city dollars.

Councilmember Weber also discussed the funding that is proposed in the agenda bill and asked about the water reserve funds and the remaining balance meeting emergency needs.

A **motion** was made by Councilmember Weber and **seconded** by Councilmember Morgan to adopt Resolution No. 16-1073, authorizing the Mayor to execute a contract with Iversen and Sons Inc. for the Downtown AC Watermain Replacement and Looping project and to appropriate additional funds from REET 2 and Water Fund reserves for the completion of this project.

Councilmember Pepper stated being inclined to support this resolution and noted it being sad the project didn't meet the criteria of the State Revolving Fund. She also asked if the City has a Water System Plan and if it expired last summer. Mr. Boettcher noted the City does have a plan and yes it is expired. Motion **passed** with all voting in favor (5-0).

#### **Resolution No. 16-1074, accepting Department of Ecology Grant for 2015-2017 Biennial Stormwater Capacity Grant**

Public Works Director Boettcher reported this being the fourth capacity grant the City has received from the Department of Ecology since the City first started our Stormwater Utility and asked for the acceptance of these grant funds.

A **motion** was made by Councilmember Pepper to review this item to the Growth Management, Land Use and Community Services Committee which will hopefully be meeting on Wednesday, February 10<sup>th</sup> at 6:30 p.m.

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to amend that motion to suspend the rules to take action on this resolution tonight.

Councilmember Deady commented on fully supporting this item. She also commented that the citizens and Council have had time to review this item since last Friday and no one has contacted her or commented on this item tonight.

Vote: Motion **failed** (2-3, Morgan, Weber, Pepper)

Councilmember Pepper **amended** her motion to say the next scheduled meeting of the Growth Management, Land Use and Community Services Committee. The motion was **seconded** by Councilmember Morgan. Motion **passed** as amended (3-2, Edelman, Deady).

#### **Resolution No. 16-1075, establishing an Employee Wellness Program**

City Clerk Martinez reported last year Mayor Benson tasked her with implementing a City wellness program for employees through the Association of Washington Cities (AWC) Wellness Program. She noted that approval of this resolution would be the first step in implementing this program.

She discussed how wellness programs have been proven to aid in the prevention of illnesses and injuries, promoting better morale, reduced absenteeism, and enhanced productivity and performance among City employees. She noted that in addition to these benefits, the City will be able to apply for a WellCity Award through AWC and if awarded will be eligible for a 2% premium discount for health benefits; this discount would apply for 2018 premiums costs, and would be approximately \$9,500 annually based on our 2015 actual rates.

In addition, she explained that participation in this program by employees is voluntary. She also discussed that participation in the program does require the City to budget a minimum of \$10 per employee, which would be approximately \$300 annually. These funds will be used to put on wellness activities and provide incentives for employees.

Once the program is established by Council the Wellness Committee will be formed and be comprised of 4 – 7 employees who will be working together to develop and implement the program using the ACW WellCity Standards.

In closing she commented that staff is excited to get this program up and going and recommends adoption of this resolution.

Councilmembers discussed their support of this program.

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Pepper to adopt Resolution No. 16-1075, establishing an Employee Wellness Program Motion **passed** with all voting in favor (5-0).

## **DEPARTMENT REPORTS: None**

## **MAYOR'S REPORT:**

Mayor Benson reported attending the short course in local planning held in Covington, the Farmer's Market kickoff meeting, and noted she will be holding Planning Commission interviews on Friday.

## **COUNCIL REPORTS:**

Councilmember Deady reported attending the short course in local planning held in Covington.

Councilmember Morgan alerted folks to watch for the calendar for the upcoming Council Committee dates and times. She also noted the agendas for these committees meeting will be up soon. She discussed attending the Sound Cities Association meeting and discussed the homelessness issue.

Councilmember Edelman discussed the homeless issue and referred to a presentation that was done recently by the committee for homelessness. She reported attending the short

course in local planning, the Lake Sawyer Community Club meeting. She noted the next Public Issues Committee meeting is February 10<sup>th</sup>, and encouraged Council to attend the STEM luncheon at the Enumclaw School District on February 11<sup>th</sup> at 11: 30 p.m.

Councilmember Weber reported he was not able to attend the short course on local planning and will do the course online. He discussed the Open Public Meetings Act and believes the City Attorney made several wrong assumptions regarding committee meetings. He stated based on his research the new council rules are legally defensible and reasonable and is disappointed that the City Attorney has taken the position that he feels is incorrect on this and other matters and for this reason has lost confidence in his ability to obtain accurate and impartial legal advice from the City Attorney. He commented on appreciating the full attendance at the Council meeting and encouraged them to continue attending.

Councilmember Pepper reported attending a parliamentary procedure meeting in Olympia put on by Jurassic Parliament. She also reported attending the short course in local planning held in Covington. She noted doing comprehensive work regarding committee structure and procedure. She also noted that these committee meetings will follow the open public meetings act. She stated doing her very best to comply with the open public meetings act and she followed the law when she called for a special meeting and did not violate the Open Public Meetings Act when helping draft the rules and has consulted with attorneys and experts in the field. In closing she thanked everyone for coming out tonight to the meeting.

**ATTORNEY REPORT: None**

**PUBLIC COMMENTS:**

Brian Derdowski, Issaquah referred to page 25 of the Council rules and stated the committee chair shall set the agenda and all meetings shall be noticed in the same manner as special meetings. He discussed the Attorney General's opinion and Council is addressing that issue. He congratulated Councilmembers who asked thoughtful questions. He commented believing the committee meetings will be a good thing for the public as they will get about 14 days to review and at least three opportunities to make input. He further added that staff will adapt and the Council meetings will be more efficient and effective.

George McPherson, Black Diamond asked Council what the impacts will be on staff and how much will it cost to have the committee meetings as structured in the Council rules. Mayor Benson stated the attorney bill for this month was three times the normal amount and should it continue at this rate we will run out of budget by June. She also stated that she will probably not be staffing the Council Committee meetings as she has not been asked to have them staffed.

Dennis Box, Black Diamond commented that this dispute is going to go on forever and the need to get some outside help and the need to contact the Attorney General. He noted he is in favor of letting the lawsuits fly. He also discussed meeting attendance.

Pat Nelson, Black Diamond commented on the City having an attorney that is doing a good job and hopes that the amazing Black Diamond logo doesn't disappear by changing the way business is done. He asked Council to take the advice of the City attorney and to fix the problem or to please step down and find someone who can do it right.

Robbin Taylor, Black Diamond commented on being at a Save Black Diamond meeting where the rules were being discussed. She noted how the Council Committees were previously staffed and the process. She also discussed the process that Councilmember Morgan outlined at the Save Black Diamond meeting.

Brock Deady, Black Diamond, commented that the Community Gym is doing good and activities continue to be booked there. He also commented that the health program passed without going to committee.

Kristen Bryant, Black Diamond stated she recognizes the need to keep order at the meeting and noted she shouldn't have spoken out earlier during the meeting. She discussed addressing stormwater repeatedly at Council meetings. She noted it being important to send the stormwater grant to committee. She also stated that Black Diamond is clearly not like other cities; it is a small town and three committees make more sense. She commented on the City Attorney having one concern at the last meeting and another concern with the rules at this meeting. She discussed the old rules not pointing out how committee meetings would be noticed and the new rules have a special notice requirement.

City Attorney Morris pointed out that she did not have one concern at the last meeting and then another concern at this meeting. She referred to a confidential memo that was sent to Councilmembers on why these rules are problematic and stated the reason the old rules did not address notice was because only two Councilmembers were on each committee and not a quorum of the Council was meeting. The issue now is that we have a quorum of the Council on committees. She commented on what language does not appear in the new rules.

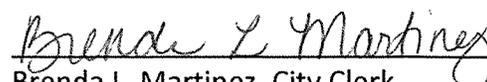
#### **EXECUTIVE SESSION: None**

#### **ADJOURNMENT:**

A **motion** was made by Councilmember Weber and **seconded** by Councilmember Pepper to adjourn the meeting. Motion **passed** with all voting in favor (5-0).

ATTEST:

  
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Carol Benson, Mayor

  
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Brenda L. Martinez, City Clerk

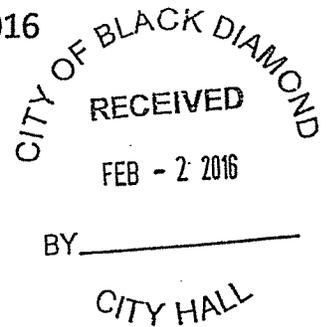
To: City Council, Black Diamond, Washington

February 2, 2016

From: George McPherson

29062 222<sup>nd</sup> Pl. SE

Black Diamond, WA



My understanding is at a past meeting of the council it was established that there would be 3 council members on each of the 3 standing committees instead of 2 members. I also understand this was done despite the recommendation of the city attorney and the city's insurance representative to not make this change.

As I understand it, each of the three committees will now have a quorum of the council at each meeting. This would appear to mean that decisions made at committee meetings will no longer need to be fully discussed at council meetings because a vote will already have been taken at committee level.

This change will no doubt require additional staff time to attend each council and committee meeting, take minutes, see that the minutes are posted, prepare necessary documents, and announce times of future committee meetings so the public can be made aware of these meetings. Also, as is now the case when the council meets, the city attorney is present. I assume the attorney will need to be present when committee meetings are held since committee votes at these meetings can be a final one. I also assume that in order to have additional staff and the city attorney available the city's budget will no doubt be impacted.

In order for citizens to be fully aware of city activities it appears an individual will need to attend at least 5 city meetings a month or--- actually--- council meetings might not be necessary as final decisions can be made at the committee level.

It surprised me to hear the council took this action against the advice of both their attorney and their insurance representative. To me this action appears to be extremely risky. Who will be held responsible if the council is challenged regarding committee actions? Will this new procedure be legal under our state's open meeting laws? What could the costs be if legal action is taken against the city's new council arrangement? Will taxpayers be footing the bill or will individual council members be held financially responsible for additional costs?

I believe this council action unnecessarily puts the city in jeopardy. I hope the council will reconsider its vote on this matter.

FEB 04 2016

BY: BDM

Horses have been used throughout history to herd cattle. A well-tempered horse with experience herding cattle is one that can be trusted. It knows that the job isn't chasing cattle, it is working cattle. The horse and rider form a team that works together to accomplish a task. A cowhand does not take a green broke horse out to do serious work. This type of horse is able to be ridden at best but has no experience working as a team. If a green broke horse is taken out to work cattle, it could take the bit and racing off it will run blindly into trouble. This is not a team, this is a disaster waiting to happen.

Face it, the new majority is green broke. Even the senior member has professed not understanding the Budget, or the confidential memos from the City Attorney and the City Insurance carrier. None of you appear to understand that you did not separate powers with your flawed Rules changes, but rather you blurred the line of separation even further. Several citizens have admonished the new Council minority to give the new majority a chance to learn the ropes, as if two Councilmembers have the power to stop anything the new majority wants to do. It would have been nice if the new majority actually wanted to learn the ropes. Instead you have taken the bit and run off half wild and blundered into trouble.

Would it not have been a better strategy to at least try to be reasonable in your cause, to collaborate and use diplomacy in order to bring the minority members over to your side? Instead you came in with clubs the first meeting and you succeeded in creating opposition to your cause. Where there could have been strength, now there are fractures. Now everything will be a fight, and you as the majority will still get your way, but is it truly the best way to accomplish what this City needs?

This method of entry onto the Public stage didn't happen out of the blue and you are not the first to be given bad advice. Joe May, Tamie Deady and Ron Taylor were all counseled to come in strong, stand united, vote unanimously, put up a strong front and take control of the Council. They did not follow this advice but they did get control of the Council. It happened with Dave Gordon when he came in and treated the sitting Council as if they were the enemy. Reality is, we are all fighting for the same thing, a better, well protected Black Diamond yet we are continually being squared off against one another by outside forces from Bellevue and Issaquah. Please remember, the new majority was strong in their opinion that they did not want anyone from outside the City limits having positions of influence on the Planning Commission. There is a dichotomy between thought and action taking place within the new majority when you continue to allow Bellevue and Issaquah to influence what you do on the City Council.



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Attorney General Rob McKenna

**OPEN PUBLIC MEETINGS ACT—Meetings Of Committee Attended By Other Members Of Governing Body**

The Open Public Meetings Act requires that notice be properly given of a meeting of the governing body. This requirement is not satisfied by notice given for a meeting of a standing committee of a city council as a governing body, where a quorum of members of the city council attend the meeting and take action as defined in the act, such that a meeting of the city council as a governing body takes place.

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**November 30, 2010**

The Honorable Barbara Bailey  
State Representative, District 10  
PO Box 40600  
Olympia, WA 98504-0600

**Cite As:  
AGO 2010 No. 9**

Dear Representative Bailey:

By letter previously acknowledged, you requested our opinion on four questions, which we have consolidated into two as follows:

- 1. If a meeting of a standing committee of a city council is regularly scheduled, noticed, and open to the public, and a majority of the city council members attend, but do not participate in, the standing committee meeting, is there both a standing committee meeting and a council meeting; and must notice for a special meeting be provided separately for the council meeting, in addition to the notice for the standing committee meeting, in order for the meeting to comply with the Open Public Meetings Act?**

**2. If a meeting of a standing committee of a city council is regularly scheduled, noticed, and open to the public, and a majority of the city council members attend and participate in the meeting, is there both a standing committee meeting and a council meeting; and must notice for a special meeting be provided separately for the council meeting, in addition to the notice for the standing committee meeting, in order for the meeting to comply with the Open Public Meetings Act?**

*[original page 2]*

### BRIEF ANSWER

The answers to your questions depend on whether a meeting of the city council takes place when notice has been given only of a standing committee meeting. A meeting of the city council may occur if a quorum of the city council members take action at the standing committee meeting, as action is defined in RCW 42.30.020(3). If so, a separate meeting of the city council has occurred (in addition to the standing committee's meeting). In that case, the additional meeting must comply with the Open Public Meetings Act's notice requirements. Where the city council takes action at a standing committee's meeting, it is not sufficient to rely on the notice that was provided for the standing committee meeting.

### BACKGROUND

Before turning to your precise questions, we explain the general legal framework of the Open Public Meetings Act (Act), RCW 42.30, which governs our answers to your questions. The Act requires that all meetings of the governing body of a public agency shall be open and public. RCW 42.30.030. "Public agency" includes any "subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act . . ." RCW 42.30.020(1)(c). "Governing body" may include the "policy or rule-making body of a public agency [such as the city council], or any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment." RCW 42.30.020(2). The Act is only concerned with a meeting where action is taken. RCW 42.30.020(4). "'Action' means the transaction of the official business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions." [1] RCW 42.30.020(3).

There are two types of meetings contemplated under the Act: regular and special meetings. Regular meetings are scheduled by ordinance, resolution, bylaws, or rule. RCW 42.30.070. The Act does not require that public agencies provide an agenda as part of the notice requirements for a regular meeting. *Hartman v. State Game Comm'n*, 85 Wn.2d 176, 181, 532 P.2d 614 (1975); *Dorsten v. Port of Skagit Cnty.*, 32 Wn. App. 785, 789-90, 650 P.2d 220, review denied, 98 Wn.2d 1008 (1982). [2] Special meetings are meetings other than regular meetings. See *Mead Sch. Dist. 354 v. Mead Educ. Ass'n*, 85 Wn.2d 140, 142, 530 P.2d 302 (1975). They may be called with at least twenty-four hours' notice to each member of the governing body and to each local newspaper and radio or television station which has previously requested in writing to be notified of special meetings. RCW 42.30.080. The notice for special

**[original page 3]**

meetings must specify the time and place of the special meeting and the business to be transacted. RCW 42.30.080.

In your request, you provide factual background that frames the scope of our opinion. For purposes of analyzing your questions, we assume these facts. First, you indicate that city councils have created a number of standing committees by ordinance. You explain that the ordinance requires regularly-scheduled and noticed committee meetings. You further state, in your letter, that "[t]he requirements for standing committee meetings are intended to be the same as or substantially similar to the requirements for full council meetings in order to ensure compliance with the [Act]."

Additionally, as you describe in your letter, the applicable ordinance provides that standing committees are composed of less than a quorum of city council members, however, city council members may attend the standing committee meetings if desired. No votes or final actions may be taken at standing committee meetings.

### ANALYSIS

- 1. If a meeting of a standing committee of a city council is regularly scheduled, noticed, and open to the public, and a majority of the city council members attend, but do not participate in, the standing committee meeting, is there both a standing committee meeting and a council meeting; and must notice for a special meeting be provided separately for the council meeting, in addition to the notice for the standing committee meeting, in order for the meeting to comply with the Open Public Meetings Act?**

The Act's requirements are triggered at any point that the governing body of a public agency has a meeting as defined by the Act. RCW 42.30.030. Since, according to your request, standing committee meetings are already regularly noticed and scheduled, [3] a concern arises under the Act only if an additional meeting results from the attendance or participation of other city council members at the standing committee meetings.

A city council is a distinct entity from a standing committee. RCW 42.30.020(3) (defining a "governing body" both as a council and a committee acting on behalf of the

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council). Although a standing committee may be created by and made up of members of the city council, it is a "governing body" when it "acts on behalf of the governing body, conducts hearings, or takes testimony or public comment." RCW 42.30.020(2); see also AGO 1971 No. 33, at 8-9. Meetings of the city council must comply with the Act, and may not rely upon the notice provided of a standing committee meeting.

Your question, therefore, depends on whether a meeting of the city council occurs, despite the fact that notice was given for only a committee meeting. This would occur only if a quorum of the full council takes an "action," as that term is defined in statute. RCW

42.30.020(4). The statutory definition of "action" is quite broad. *Miller v. City of Tacoma*, 138 Wn.2d 318, 327, 979 P.2d 429 (1999); AGO 1971 No. 33, at 19. The Act defines "action" as "the transaction of the official business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions." RCW 42.30.020(3). As noted by the court in *Eugster v. City of Spokane*, 110 Wn. App. 212, 39 P.3d 380 (2002), the definition includes a list that is not exhaustive of conduct that might constitute action. If an additional meeting occurs because the city council—a governing body distinct from the standing committee—attends and takes action, that new meeting requires separate compliance with the requirements of the Act. To put the matter differently, the Act is not satisfied by giving notice of a meeting of a standing committee, if the meeting turns out to constitute a meeting of the city council itself. Such notice would not satisfy the purpose of the Act—to assure advance notice to the public of meetings of a governing body, so that the actions of a governing body are "taken openly and . . . deliberations [are] conducted openly." RCW 42.30.010 (declaration of legislative intent). Therefore, in answering your questions, we consider whether either of the described scenarios constitutes a "meeting" of the city council implicating the Act.

Although your request frames the question based on whether or not the council members "participate" in the standing committee's meeting, the relevant inquiry is whether the council members take action while attending the meeting. RCW 42.30.020(4) (defining a meeting as a meeting at which action is taken). We concluded in 2006 that a quorum of city or county council members could attend a public meeting called by a third party without violating the Act, as long as the council members did not take action. AGO 2006 No. 6. [4] We emphasized that whether members take action depends on whether the particular circumstances fall within the "transaction of the official business" of the governing body." AGO 2006 No. 6, at 2. For example, council members are taking action where they deliberate or discuss a decision they might eventually make. AGO 2006 No. 6, at 2 (citing *In re Recall of Beasley*, 128 Wn.2d 419, 908 P.2d 878 (1996)).

Additionally, for example, action occurs where a governing body receives public testimony. AGO 2006 No. 6, at 2. As we cautioned in the 2006 opinion, council members

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would need to consider whether they are receiving public testimony or taking other action while attending the meeting. Ultimately, whether a quorum of the city council is taking action is a fact-specific analysis that cannot be answered in the abstract, and accordingly, cannot be answered in the context of this opinion.

However, it bears mentioning that it is more likely in the scenarios you present, than in the situation discussed in the 2006 opinion, that the council members would be taking action while attending the standing committee meeting. In the questions that you present, the standing committee is a subpart of the city council—it is created by the city council and the business it is transacting is almost certainly within the scope of the city council's official business. That makes the present scenario quite different from attendance at a completely unrelated third party's meeting discussed in the 2006 opinion. It is more likely that city council members attending a meeting of the council's own standing committee could be receiving public testimony, considering proposals, or

performing other types of action.

This is not to suggest that council members cannot attend committee meetings. We do not conclude that council members who are not members of the committee are disqualified from attending what is otherwise an open public meeting; we merely conclude that if such a meeting is one at which the council takes "action," then compliance with the Open Public Meetings Act is required. Moreover, even where the council members' attendance constitutes a meeting of the council under the Act, they are not prohibited from attending the standing committee meetings by the Act. Rather, as long as the council follows the requirements for a special meeting under RCW 42.30.080, the members may attend and take action at the standing committee meeting. AGO 2006 No. 6, at 3.

**2. If a meeting of a standing committee of a city council is regularly scheduled, noticed, and open to the public, and a majority of the city council members attend and participate in the meeting, is there both a standing committee meeting and a council meeting; and must notice for a special meeting be provided separately for the council meeting, in addition to the notice for the standing committee meeting, in order for the meeting to comply with the Open Public Meetings Act?**

As mentioned above, the relevant question for purposes of analyzing whether the city council members' attendance triggers additional notice requirements under the Act depends on whether the city council takes action (as it is defined by RCW 42.30.020(3)) at the standing committee meeting. Assuming it does, a meeting of the city council has occurred in addition to a meeting of the standing committee. In such a situation, the Act requires notice of the city council's meeting in addition to notice of the standing committee's meeting.

When a quorum of the city council takes action at a standing committee meeting, a city council meeting has occurred, and the city council must provide notice of its meeting consistent with the Act. The standing committee meeting is a separate governing body from the

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city council. It is not sufficient to rely on the notice that was provided for the standing committee meeting.

We trust that the foregoing will be useful to you.

ROB MCKENNA  
Attorney General

ALICIA O. YOUNG  
Assistant Attorney General

wros

Attachment 1

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[1] "Final action' means a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance." RCW 42.30.020(3).

[2] However, other statutes may impose additional notice requirements. For example, RCW 35.23.221 requires second class cities to notify the public of the preliminary agenda for the forthcoming council meeting. See also RCW 35A.12.160.

[3] Because the ordinances you reference treat standing committee meetings as regular meetings under the Act, we need not explore under what circumstances such meetings would be subject to the Act. For general reference, however, such meetings would be subject to the Act if the standing committee constitutes a public agency under RCW 42.30.020(1)(c) ("public agency" defined to include any "subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act"). See also AGO 1971 No. 33, at 8-9 (concluding subcommittees created by statute or ordinance are agencies under the Act). Even if the standing committee does not constitute a public agency, it would be subject to the Act when it acts as a governing body by either acting on behalf of the city council or by conducting hearings, or taking testimony or public comment. RCW 42.30.020(2).

[4] Because we cite our 2006 opinion several times during the course of this analysis, a copy is attached for ease of reference.

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Katherine A. George

RECEIVED  
CLERK OFFICE

FEB 04 2016

BY: BYM

To: Patricia Pepper and Erika Morgan  
From: Katherine A. George, WSBA # 36288  
Re: Application of Open Public Meetings Act, Chap. 42:30 RCW  
Date: February 4, 2016

Thank you for seeking guidance about how to comply with the Open Public Meeting Act (OPMA), Chapter 42.30 RCW, as members of the Black Diamond City Council. I regularly practice law in the area of open government, advocating for the right of citizens to know what their governments are doing. I also serve on the board of the Washington Coalition for Open Government and chair its legal committee. I commend you for making an exceptional effort to clarify a statute that is often muddled in confusion.<sup>1</sup>

## I. Brief Summary of the OPMA

In adopting the OPMA decades ago, the Legislature expressed the following intent:

The legislature finds and declares that all public commissions, boards, councils, committees, subcommittees... and all other public agencies of this state and subdivisions thereof exist to aid in the conduct of the people's business. It is the intent of this chapter that their actions be taken openly and that their deliberations be conducted openly.

See RCW 42.30.010.

To carry out that intent, the Legislature adopted RCW 42.30.030, which says:

All meetings of the governing body of a public agency shall be open and public, and all persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in this chapter.

Thus, openness is required if: 1) a "governing body" of a public agency 2) has a "meeting." These terms are defined in RCW 42.30.020. In a nutshell, a governing body meets when it conducts official business, including discussing or considering policies.

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<sup>1</sup> The OPMA is notorious for its lack of clarity. Consider, for example, the circular language in RCW 42.30.020(3), which says: "Meeting" means meetings at which action is taken." OPMA suits are relatively rare, resulting in little guidance from the courts. In light of the scant definitions in the statute, the paucity of case law, and the strong public interest in transparency, it is prudent to err on the side of openness.

A governing body's meeting must be regularly scheduled or announced at least 24 hours in advance, so that the public has a meaningful opportunity to observe the policymaking process. See RCW 42.30.060, RCW 42.30.070 and RCW 42.30.080. If the meeting is specially scheduled, the governing body cannot take final action on any business that was not included in the meeting announcement.

There are 15 exceptions permitting closed meetings ("executive sessions") for specific, limited purposes such as reviewing an employee's performance. See RCW 42.30.110. Before closing a meeting, the governing body chair must announce the purpose of closure and how long it will last. Under RCW 42.30.120, any member of a governing body who knowingly violates the OPMA may be personally liable for a \$100 civil penalty, and the agency must pay attorney fees for any lawsuit that proves an OPMA violation.

## II. Can Standing Committees Have a Quorum of Council Members?

You asked whether it is legal under the OPMA for a majority of council members to serve on a standing committee of a council. The answer is **yes**, as long as the committee's meetings meet the same openness requirements that apply to full council meetings.

Washington courts have consistently held that a "meeting" of a "governing body" occurs when a majority of the full body's members gather with the intent to conduct official business. See, for example, *Wood v. Battle Ground School District*.<sup>2</sup> Thus, when at least three members of a five-member council gather to consider official business, it doesn't matter whether it's called a committee meeting or a council meeting – the presence of a council majority makes it a "meeting" for purposes of requiring openness under RCW 42.30.030.

If the council plans to meet regularly as a standing committee, it should adopt a regular schedule so that the public can anticipate opportunities to attend committee meetings. RCW 42.30.070 says, "The governing body of a public agency shall provide the time for holding regular meetings by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by that body." Also, agendas for regular meetings should be posted online at least 24 hours in advance pursuant to RCW 42.30.077.

Alternatively, the council's presiding officer or a majority of council members can call a "special meeting" each time the council meets as a standing committee. A special meeting requires public notice to be posted 24 hours in advance on the agency's Web site and at the meeting site, at a minimum. See RCW 42.30.080(2). Unlike at a regular meeting, final action at a special meeting is limited to the matters specifically mentioned in the public notice.

There is nothing in the OPMA that limits the size of a council committee. In fact, it is not unusual for a council to have "a committee of the whole" consisting of all council members. As long as the public has the requisite notice and opportunity to attend, the

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<sup>2</sup> 107 Wn.App. 550 (Div. 2, 2001).

governing body's meetings will satisfy the OPMA.

### III. Can A Majority of Members, Acting As a Committee, Recommend Legislation to the Full Council?

You also asked whether the OPMA permits a majority of the council, acting as a standing committee, to recommend adoption of a proposal by the full council. The answer is yes, again assuming that notice and openness requirements are met.

RCW 42.30.020(2) defines "governing body" as the "committee, council, or other policy or rule-making body of a public agency, or any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment." So in order to constitute a "governing body" for OPMA purposes, a committee must hold a public hearing, take testimony or comments, or "act on behalf of" the full body. Last October, in *Citizens Alliance for Property Rights Legal Fund v. San Juan County*,<sup>3</sup> the Washington Supreme Court addressed for the first time what it means to "act on behalf of" a full council. If a committee was "created or specifically authorized" by the council, and "exercises actual or de facto decision-making authority on behalf of the governing body," then it is a governing body itself for open-meeting purposes.

That decision and the statutory definition of "governing body" seem to contemplate that a full council may grant its decision-making authority to a committee. Whether that is a good idea, or even permissible under applicable city and state codes, is beyond the scope of this memo. But if all the committee does is *recommend* passage by the full council, then regardless of whether the full council has formally granted any decision-making authority to the committee, the council still retains the *final* decision-making authority. It is certainly possible for committee resolutions to be drafted so that recommendations are not binding, and to make clear that the committee is merely assisting in, but not assuming control of, decision-making by the full council.

A committee recommendation process can improve opportunities for public participation. Standing committees can develop an expertise in a particular policy area and hold more in-depth public meetings than the full council can. Also, a "do pass" recommendation is a clear signal to the public as to which way the political wind is blowing, and can help mobilize concerned citizens to point out information or considerations that have been overlooked.

I hope this brief memo has been helpful, and look forward to answering any additional questions you may have.