

BLACK DIAMOND CITY COUNCIL MINUTES
Continuation of November 17 Regular Meeting
to November 29, 2016

Council Chamber, 25510 Lawson Street, Black Diamond, Washington

CALL TO ORDER, FLAG SALUTE:

Mayor Benson called the regular meeting continued from November 17, 2016 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: Jamey Kiblinger, Police Chief; David Linehan, City Attorney; Kevin Esping, Facilities Equipment Coordinator; Brian Lynch, Sergeant; May Miller, Finance Director; and Brenda L. Martinez, City Clerk.

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Morgan to amend the agenda.

Mayor Benson called Councilmember Pepper out of order.

Councilmember Pepper **appealed** the decision of the Chair.

In unison both Councilmember Pepper and Councilmember Morgan **appealed** the decision of the Chair.

Mayor Benson again called Councilmember Pepper out of order.

Councilmember Morgan stated the Mayor was out of order and has a duty to call the vote on the appeal.

Mayor Benson called a five minute recess at 7:00:48 p.m.

Councilmember Morgan and Councilmember Pepper both explained the Mayor does not have the ability to call a recess without a motion and a vote of the Council body.

The meeting was called back to order at 7:07 p.m.

Councilmember Pepper continued stating there is a motion and a second on the floor to amend the agenda and that business needs to be taken care of.

Mayor Benson commented she didn't recognize Councilmember Pepper and further stated that as the presiding officer she has a statement to make.

Point of order was called by Councilmember Morgan that Councilmember Pepper has the floor.

There continued to be back and forth on this between Councilmembers Pepper, Morgan, and Mayor Benson regarding the motion on the floor, the appeal on the floor, and being called out of order.

Councilmember Pepper appealed the decision of the chair, again.

Councilmember Morgan called the Mayor out of order and stated she (Mayor) has a duty to call a vote on the appeal and read in part RCW 35A.12.120 regarding voting.

Mayor Benson called Councilmember Morgan out of order.

Councilmember Morgan stated the Chair is out of order as she is not performing her duty as the presiding officer to call for the vote on the motion on the floor.

Councilmember Pepper called for a roll call vote.

Mayor Benson stated she has a duty to explain what this meeting is and you cannot change this meeting. She explained this meeting is a continuation of the November 17 regular business meeting which was adjourned to tonight's date due to a lack of a quorum. She further stated would like them to understand that the agenda stands. The agenda can't be changed and no adjustments can be made as no adjustments were made before the meeting on the 17th. She commented that between the 10th and the 17th there were no communications from any of the three Councilmembers at all on this meeting.

Councilmember Edelman read a **motion** regarding a censure on Councilmember Pepper. This censure is attached and incorporated into the minutes.

Councilmember Morgan called a point of order as this item is not on the agenda.

Both Councilmembers Pepper and Morgan appealed the decision of the Chair and noted this is not on the agenda.

Councilmember Morgan stated there is a motion on the floor and Councilmember Edelman is out of order as this is not on the agenda.

Councilmember Edelman continued to read the censure and at the same time Councilmember Pepper continued to call point of order as this is not on the agenda.

Councilmember Deady **seconded** the motion.

Point of order was called by Councilmember Morgan as this item is not on the agenda for tonight.

Discussion continued around this item not being on the agenda and a vote not being allowed. Councilmember Pepper noted the amended agenda was brought forward and also discussed the motion and second to amend the agenda. Mayor Benson noted the agenda cannot be replaced as this is a continued meeting.

Point of order was called by Councilmember Morgan.

Councilmember Pepper called for the question.

Vote: 2-3 (Weber, Morgan, Pepper) Following the vote there was discussion that Councilmember Pepper was not allowed to vote on her own censure making it a tie vote of 2-2 (Weber, Morgan). Mayor Benson broke the tie with an affirmative vote. Motion **passed** 3-2 (Weber, Morgan).

There was continued discussion about whether Councilmember Pepper is allowed to vote. Councilmember Morgan and Pepper stated this is procedural matter and she (Pepper) is allowed to vote. Mayor Benson stated Councilmember Pepper cannot vote on her own censure.

Councilmember Pepper noted there is a motion on the floor to amend the agenda. Mayor Benson stated the motion was called out of order. Councilmember Pepper stated she appealed the decision of the chair and Mayor Benson noted that appeal was called out of order. There continued to be discussion between Councilmembers Pepper, Morgan, and Mayor Benson regarding the presiding officer's duty to call for the vote. Councilmember Morgan and Pepper continued that as the presiding officer she (Mayor) is out of order as she (Mayor) is not performing her duty to call for the vote.

Councilmember Morgan called for the vote. Mayor Benson noted she (Morgan) is not the presiding officer and then called Councilmember Pepper out of order as the agenda cannot be substituted. Mayor Benson continued to call Councilmember Pepper out of order.

Mayor Benson called a five minute recess at 7:13 p.m.

The meeting was called back to order at 7:21 p.m.

APPOINTMENTS, ANNOUNCEMENTS, PROCLAMATIONS AND PRESENTATIONS:

Mayor Benson announced the City has a problem with a fire engine and it needs to be replaced. This engine was scheduled to be replaced in 2018, however since there is an issue the City will need to replace it sooner than expected and find the additional funding for this expenditure. She also reported that Black Diamond will be receiving \$27, 500 from King County; \$5,000 to Parks and Recreation, \$5,000 to the Black Diamond Community

Center, \$2,500 to the Black Diamond Historical Society, and \$15,000 to the Ginder Creek Trail. In addition, the City has received a Transportation Improvement Board grant in the amount \$63,236 for street overlays in multiple locations within the City. Lastly, she announced the invited everyone to attend the Community Tree Lighting Ceremony at the Black Diamond Community Center on December 2, 2016 at 6:00 p.m.

PUBLIC COMMENTS:

Mira Hoke, Black Diamond spoke to Council.

Mitch Neary, Black Diamond spoke to Council.

Leslie Cooley, Black Diamond spoke to Council.

CONSENT AGENDA:

- 1) **Claim Checks** – November 17, 2016 - No. 44093 through No. 44125 and EFTs in the amount of \$83,444.74
- 2) **Payroll** – October 31, 2016 No. 19222 – No. 19240 (voids 19223, 19227) and EFTs in the amount of \$260,775.35
- 3) **Minutes** – Special Meeting of October 18, 2016, Special Meeting of October 27, 2016 and Council meeting of November 3, 2016

Councilmember Morgan requested all items on the above consent agenda be moved under new business.

PUBLIC HEARINGS:

- 4) **AB16-073** – Continuation - Proposed Ordinances Regarding Property Tax Increases

Finance Director Miller reported to Council on this item and noted 100% of the increase and property taxes go to fund public safety. Ms. Miller also noted receiving a written comment against adoption of these ordinances which is attached and incorporated into the minutes.

Mayor Benson opened the public hearing at 7:31 p.m.

Leslie Cooley, Black Diamond spoke in favor of adoption of these ordinances.

Mitch Neary, Black Diamond spoke in favor of adoption of these ordinances.

Mayor Benson closed the public hearing at 7:32 p.m.

- 5) **AB16-067** – Proposed 2017 Preliminary Budget

Finance Director Miller briefed Council on this item.

Mayor Benson opened the public hearing at 7:34:18 p.m. There were no public comments received or heard and the public hearing was closed at 7:34:39 p.m.

UNFINISHED BUSINESS:

6) Postponed Minutes – Council meetings of July 21, 2016 and August 18, 2016, Council/Planning Commission Joint Meeting of August 23, 2016, Special Meeting of August 25, 2016, and Council Meeting of September 1, 2016

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to adopt these meeting minutes.

There was discussion between Councilmembers.

Point of order was called by Councilmember Weber stating Councilmember Pepper has the floor.

Point of order was called by Councilmember Edelman.

Councilmember Edelman called the question.

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

Following the vote there was continued discussion this item.

Point of order was called by Councilmember Morgan that Councilmember Deady is impugning other Councilmembers.

7) AB16-063A – Ordinance Granting Franchise Agreement with CCD Black Diamond Partners, LLC

Councilmember Pepper stated this item is assigned to the Government Operations Committee.

Point of order was called by Councilmember Edelman regarding on November 3rd this item was already assigned to that committee.

There was Council discussion on this item with the focus on attorney review and the need to review the Development Agreement 7.1.7.

Point of order was called by Councilmember Pepper regarding Councilmember Edelman impugning another Councilmember.

Point of order was called by Councilmember Pepper that Councilmember Edelman's remarks are off topic.

Point of order was called by Councilmember Pepper regarding Councilmember Edelman remarks violating Council rule 6.3 because they are discourteous or impugn members of the Council.

Point of order was called by Councilmember Pepper.

City Attorney Linehan stressed that these franchise agreements (#7 & #8) are time sensitive.

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Morgan to table this item.

Point of order was called by Councilmembers Pepper and Morgan.

Point of order was called by Councilmember Pepper stating Councilmember Deady's remarks violate Council rule 6.3.

Point of order was called by Councilmember Pepper.

Vote: Motion **passed** 3-2 (Deady, Edelman).

8) AB16-064A – Ordinance Granting Franchise Agreement with Astound Broadband, LLC

Councilmember Pepper stated this item has the Council committee assignment of Government Operations.

There was discussion on when the committee meeting will be held.

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Morgan to table this item indefinitely. Motion **passed** 3-2 (Edelman, Deady).

9) AB16-065A – Resolution Authorizing Interlocal Agreement with AWC RMSA

Councilmember Pepper stated this item has been assigned to the Government Operations committee.

Councilmember Pepper moved that the Council Government Operations committee recommends additional review for any potential adjustments prior to adoption.

There was discussion on this item.

Point of order was called by Councilmember Pepper.

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to adopt a resolution regarding membership in the Association of Washington Cities Risk Management Service Agency.

There was Council debate on this item and committee meetings

Point of order was called by Councilmember Pepper stating the committees are not illegal.

Councilmember Pepper called a point of order that Councilmember Deady is violating Council rule 6.3.

Discussion continued.

Councilmember Edelman called for the question.

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

A **motion** was made by Councilmember Pepper and seconded by Councilmember Morgan to move this item to the Government Operations Committee. Motion **passed** 3-2 (Deady, Edelman).

NEW BUSINESS:

Clerk note: The two property tax ordinances were approved out of order.

10) AB16-068 – Ordinance Setting the Property Tax Dollar Amount for 2017

Finance Director Miller reported to Council on this item.

A **motion** was made by Councilmember Weber and **seconded** by Councilmember Pepper to postpone this item to the December 1st meeting at 7:00 p.m.

There was Council discussion on this item.

Point of order was called by Councilmember Pepper regarding Councilmember Deady's language.

Point of order was called by Councilmember Pepper regarding Councilmember Deady impugning another Councilmember.

Discussion continued.

A point of order was called by Councilmember Pepper regarding Councilmember Edelman violating Council rule 6.3.

Another point of order was called by Councilmember Pepper.

Following discussion between Council, Attorney, and staff Councilmember Weber **withdrew** his motion.

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to adopt an ordinance setting the property tax dollar amount to be used for public safety, including, police, fire and emergency services. Motion **passed** 4-1 (Pepper).

11) AB16-069 – Ordinance Setting the Property Tax Percentage Increase and Dollar Amount

Finance Director briefed Council on this proposed ordinance.

A **motion** was made by Councilmember Weber and **seconded** by Councilmember Edelman to adopt an ordinance setting the property tax percentage increase and dollar amount as calculated by King County for 2017 property taxes to be used for public safety, including fire police, fire, and emergency services. Motion **passed** 4-1 (Pepper).

12) AB16-070 – Ordinance Amending the 2016 Budget

Councilmember Pepper stated she would like to amend this for first reading and Council Committee assignment is Budget and Finance Committee.

Finance Director Miller reported to Council on the proposed 2016 budget amendment ordinance.

A **motion** was made by Councilmember Deady and **seconded** by Councilmember Edelman to adopt an ordinance adopting the 2016 budget amendment. Motion **failed** 2-3 (Morgan, Weber, Pepper)

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Morgan to move this to the Budget and Finance Committee as it is for first reading. (**No vote was taken on this motion**).

There was Council discussion on this item and Councilmember Weber announced the Budget and Finance Committee meeting will be December 12 at 6 p.m. at the Black Diamond Library unless that meeting room is not available and then it would be at the Black Diamond Bakery. He also asked that the Mayor notice this meeting and open the Council Chambers as was done earlier in the year.

Point of order was called by Councilmember Pepper.

Discussion continued on committee meetings.

13) AB16-071 – Ordinance Approving an Interfund Loan from the Sewer Capital and Reserve Fund to the Equipment Replacement for Replacement of Four Police Vehicles in 2017

Finance Director Miller reviewed with Council the proposed interfund loan ordinance and purpose.

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to adopt an ordinance approving an interfund loan from the sewer capital and reserve fund to the equipment replacement fund for the replacement of four police vehicles in 2017.

There was Council discussion and following discussion Councilmember Edelman **withdrew** her motion.

A **motion** was made by Councilmember Weber and **seconded** by Councilmember Morgan to move this item to the Budget and Finance Committee meeting at 6:00 p.m. on December 12th. Motion **passed** 3-2 (Deady, Edelman).

Councilmember Weber stated it is his intention to bring this back at the December 15th meeting.

14) AB16-072 – Resolution Adopting the 2017-2022 Capital Improvement Plan

Finance Director Miller reported on this proposed resolution.

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Morgan to not have this resolution voted on this evening and would like to amend the agenda to not have the Council take this up at this time.

There was Council discussion.

Vote: Motion **passed** 3-2 (Edelman, Deady).

Below are the consent agenda items Councilmember Morgan at the beginning of the meeting placed under new business.

1) Claim Checks – November 17, 2016 - No. 44093 through No. 44125 and EFTs in the amount of \$83,444.74

A **motion** was made by Councilmember Morgan and **seconded** by Councilmember Pepper to postpone all the claim checks to the December 15th Council meeting. Motion **passed** 3-2 (Edelman, Deady).

There was Council discussion.

Point of order was called by Councilmember Pepper.

Point of order was called by Councilmember Morgan stating Councilmember Deady is impugning her and violating Council ruled 6.3.

2) Payroll – October 31, 2016 - No. 19222 through No. 19240 (voids 19223, 19227) and EFTs in the amount of \$260,755.35

A **motion** was made by Councilmember Weber and **seconded** by Councilmember Morgan to accept the payroll of October 31, 2016. Motion **passed** with all Council voting in favor (5-0).

3) Minutes – Special Meeting of October 18, 2016, Special Meeting of October 27, 2016, and Council Meeting of November 3, 2016.

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Weber to postpone the minutes indefinitely.

Council discussion continued on this.

Point of order was called by Councilmember Pepper regarding Councilmember Edelman violating Council rule 6.3.

Vote: Motion **passed** 3-2 (Edelman, Deady).

DEPARTMENT REPORTS:

Clerk Department

City Clerk Martinez reported on the status of past due meeting minutes.

Councilmember Morgan expressed appreciating the Clerks work and would like to see the point of orders and appeal the decisions of the chair in the minutes.

MAYOR'S REPORT:

Mayor Benson reported attending the SCATBd meeting. She also discussed the Black Diamond Community Center request of \$10,000 for liability insurance and noted the Clerk would be sending the information out early so it can be placed on the December 15th agenda and asked that it be acted upon that night.

COUNCIL REPORTS:

Councilmember Deady reported attending a finance committee meeting, SCATBd meeting, the Thanksgiving luncheon at the Black Diamond Community Center, a roundtable meeting on transportation, fire ad hoc committee meeting, and a public safety meeting.

Councilmember Morgan reported on the King Conservation District meeting on the 19th.

Councilmember Edelman reported attending the Public Issues Committee meeting, meeting with Finance Director Miller to review vouchers, Council work session, Marie Freeman memorial, fire ad hoc committee meeting, chamber luncheon, CERT class, November 17 Council meeting, Kiwanis Thanksgiving dinner, and the Regional Transportation Summit.

Councilmember Weber apologized for not being at the November 17th meeting as he was out of town for work. He noted he is working on the budget, discussed event being on the community events calendar, and reminded everyone there will be a Budget and Finance meeting at 6:00 p.m. at the Black Diamond Library.

Councilmember Pepper reported attending the Council work session, CERT training and commented she is learning a lot; attended a day long conference on December 8 on Taking Government from Good to Great.

ATTORNEY REPORT: None

PUBLIC COMMENTS:

Mitch Neary, Black Diamond commented.

Bob Edelman, Black Diamond commented.

Gary Davis, Black Diamond commented.

EXECUTIVE SESSION: None

ADJOURNMENT:

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

The meeting ended at 9:52:36 p.m.

ATTEST:

Carol Benson, Mayor

Brenda L. Martinez, City Clerk

Censure of Council Member Pat Pepper

WHEREAS, BDMC 2.04.010 mandates that Council meetings be held on the first and third Thursdays of each month at the hour of 7:00 p.m.;

WHEREAS, failure to attend a regularly scheduled meeting that results in the lack of a quorum interferes with managing the business of the City and protecting the best interests of its citizens; because a quorum is required to conduct City business, and

WHEREAS, failure to attend the regularly scheduled meeting can result in significant civil, criminal, and other penalties assessed against the noncompliant parties due to the detrimental impact upon the City and its citizens by not having a quorum present;

WHEREAS, Pat Pepper stated that she would not be attending the regularly scheduled meeting of November 17, 2016;

WHEREAS, the reason cited was that “Well, the Budget Committee [Weber and Morgan] isn’t going to be there. Why would I go to a meeting where the Budget Committee isn’t there?”

WHEREAS, it was pointed out by the Mayor that that was not a valid reason.

WHEREAS, by her absence, Pat Pepper ensured that a quorum would not be present, and City business could not be conducted;

WHEREAS, such action constituted interference with government operations;

WHEREAS, the Presiding Officer found the absence of Pat Pepper was willful and unexcused;

NOW THEREFORE,

THE City of Black Diamond hereby and publicly censures Councilmember Pat Pepper for violation of her duty to the Citizens of Black Diamond to obey all laws; for willful interference with government operations; and for violation of the oath of office. You are hereby warned to cease and desist disobeying local, and state law and to adhere to your oath of office.