

CITY OF BLACK DIAMOND
September 21, 2017 Regular Business Meeting Agenda
Per Council Rules of Procedure
25510 Lawson St., Black Diamond, Washington

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

CHANGES TO AND APPROVAL OF AGENDA (Per Council Rule 3.4)

Note: Black Diamond Council Rule 2.2 requires that the preliminary agenda be approved by the Council President and Council Mayor Pro Tem prior to posting on the website. It is the City Clerk's role to prepare the draft agenda, send it for approval or amendment per the Council Rules, then post to the website. At the point of preparation of this document, an incorrect draft was posted to the city website. Although the mayor disputes the Council agenda process, the Council agenda process is legal according to the city's legal service providers.

For the preliminary agenda to be approved for public notice, it must follow the Council Rules including:

- Items of New Business are for first reading and Council committee assignment (Rule 9.1. This rule can be suspended by Council vote, Rule 7.3). Any Council member can add an item of New Business for first reading.
- For Unfinished Business, once an item is assigned to committee, a committee recommendation or vote of the Council is required to relieve it from committee (Rule 18.1.1 and Rule 18.1.3.c).

—The "Consent Agenda" contains minutes and claim checks and comes after "New Business" (Rule 3.12).

APPOINTMENTS, ANNOUNCEMENTS, PROCLAMATIONS AND PRESENTATIONS:

PUBLIC COMMENTS: Persons wishing to address the City Council regarding items of new business are encouraged to do so at this time. When recognized by the Mayor, please come to the podium and clearly state your name. Please limit your comments to 3 minutes. If you desire a formal agenda placement, please contact the City Clerk at 360-886-5700. Thank you for attending.

PUBLIC HEARINGS: None

UNFINISHED BUSINESS:

- 4) **AB17-054A** – Resolution Amending Public Defender Contract with O'Brien, Barton & Hopkins
This item was assigned to the Council Government Operations Committee
Councilmember Morgan
- 5) Minutes of May 5, 2016 *Councilmember Morgan*
- 6) Minutes of August 17, 2017 *Councilmember Pepper*

NEW BUSINESS:

CONSENT AGENDA:

- 1) **Claim Checks** – September 21, 2017 - No. 45311 through No. 45372 and EFTs in the amount of \$275,443.13
- 2) **Payroll** – August 31, 2017 – No. 19391 through No. 19407 and ACHs in the amount of \$301,131.74
- 3) **Minutes** – Council Meeting of September 7, 2017

DEPARTMENT REPORTS:

MAYOR'S REPORT:

COUNCIL REPORTS:

- Councilmember Deady
- Councilmember Morgan
- Councilmember Edelman
- Councilmember Weber
- Councilmember Pepper

ATTORNEY REPORT:

PUBLIC COMMENTS:

EXECUTIVE SESSION:

ADJOURNMENT:

Americans with Disabilities Act – Reasonable Accommodations Provided Upon Request (360-886-5700)

BLACK DIAMOND CITY COUNCIL MINUTES

September 21, 2017

Council Chamber, 25510 Lawson Street, Black Diamond, Washington

CALL TO ORDER, FLAG SALUTE:

Mayor Benson called the regular meeting to order at 7:04 p.m. and led us all in the Flag Salute.

ROLL CALL:

PRESENT: Councilmembers Morgan, Edelman, Weber, and Pepper

ABSENT: Councilmember Deady (excused)

Staff present: Kevin Esping, Facilities Coordinator; Officer Henrich; David Linehan, City Attorney, and Brenda L. Martinez, City Clerk.

CHANGES TO AND APPROVAL OF AGENDA:

Councilmember Pepper **moved** to adopt the Council approved agenda per Council Rules of Procedure; **second** Councilmember Morgan.

Councilmember Pepper spoke to the changes on the approved agenda which were committee assignment was noted, May 5, 2016 Council minutes were added under unfinished business as item 5, and August 17, 2017 Council minutes were added under unfinished business as item 6. She also noted the consent agenda items were placed after new business in accordance with the Council Rules of Procedure 3.12.

Vote: Motion **passed** 3-1 (Edelman).

APPOINTMENTS, ANNOUNCEMENTS, PROCLAMATIONS, AND PRESENTATIONS: None

PUBLIC COMMENTS:

Leslie Cooley, Black Diamond spoke to Council.

Pam McCain, Planning Commission Chair spoke to Council.

Gary Davis, Black Diamond spoke to Council.

Judy Carrier, Auburn spoke to Council.

PUBLIC HEARINGS: None

UNFINISHED BUSINESS:

4) AB17-054A – Resolution Amending Public Defender Contract with O’Brien, Barton & Hopkins

Mayor Benson addressed this item with Council.

Councilmember Morgan discussed this resolution being in the Gov Ops Committee. She also noted it having review by Attorney Glenn and she personally recommended passage of this measure.

Councilmember Edelman **moved** to adopt a resolution extending and amending the contract for public defense services with O’Brien, Barton & Hopkins, PLLP; **second** Councilmember Weber. Motion **passed** 4-0.

5) Minutes of May 5, 2016

Councilmember Morgan reported to Council on this item.

Councilmember Morgan **moved** to have attorney Glenn address the issue of corrected minutes that are not accompanied with a proper Council approved agenda for that particular meeting; **second** Councilmember Weber. Motion **passed** 3-1 (Edelman).

Attorney Glenn reported minutes are public records and they need to be maintained and corrected if there are errors. In this case, he noted that Councilmember Morgan requested certain changes and he is suggesting that it is important that the agendas are made clear. In terms of correcting minutes, it is the discretion of the Council to correct the matters and the other existing original ones should be maintained because they are a public record and should not be destroyed simply because they were corrected.

Councilmember Weber clarified that what Attorney Glenn said was that the amended agendas that were voted on at the Council meetings should be included as part of the minutes and posted.

Councilmember Morgan **moved** that in the minutes that the Council approved agenda appear in the minutes right before the record of the vote on approving the agenda; **second** Councilmember Pepper. (No vote taken)

There was Council discussion on what the motion by Councilmember Morgan meant. Councilmember Morgan clarified the intent of her motion.

Attorney Linehan suggested that to ease the administrative burden that a pdf version could be attached to the front of the minutes.

Councilmember Morgan **amended** her motion to attach the Council approved agenda from the meeting into the minutes at the beginning of the minutes; **second** Councilmember Pepper.

There was Council discussion.

Amended Motion Vote: Motion passed 4-0.

Councilmember Morgan **moved** she has a second question, when she was reviewing these minutes and her second question was that there are multiple minutes posted on our website and was wondering may she have Attorney Glenn address that issue; **second** Councilmember Pepper.

Councilmember Weber raised a point of order to take a vote.

Vote: Motion passed 3-1 (Edelman).

Attorney Glenn noted getting back to the public records act, these documents are important now and into the future so that anyone who wishes to do a search of what the Council does or does not do – you want to make certain that every document that is considered by the Council at an open meeting is available. In terms of agendas, and in terms of minutes, the same; if you change them as is being proposed then both sets should be kept on the public record and on the City's website. He realizes this means the clerk has to maintain that, but the goal here is to ensure that anyone who wants to see it, can see it – see what was changed. He also noted making certain the agendas are posted on the website and giving access is important and to remember the agendas are in fact decisions of the Council, and means they can be amended at Council meetings.

Councilmember Morgan **moved** that we accept the amended minutes for the May 5th meeting with the proviso that we just heard here about including the Council approved agenda for that meeting in the minutes; **second** Councilmember Weber. Motion **passed** 4-0.

6) Council Minutes of August 17, 2017

Councilmember Pepper **moved** to adopt the corrected minutes of the August 17, 2017 meeting as sent to the Council earlier this week; **second** Councilmember Weber. Motion **passed** 4-0.

NEW BUSINESS: None

CONSENT AGENDA:

Councilmember Morgan stated that she would like to address each consent item separately.

1) Claim Checks – September 7, 2017 - No. 45243 through No. 45310 (void 45083) in the amount of \$429,568.44

Councilmember Morgan spoke to the four claim checks she would like to pull which were 45356 (RH2), 45336 (Kenyon Disend), 45334 (HWA), 45312 (AHBL).

Councilmember Morgan **moved** to accept the rest of the claim checks; **second** Councilmember Weber. Motion **passed** 4-0.

Councilmember Morgan noted 45321, 45334, and 45356 are vouchers that have on them MDRT work as part of the work performed by the contractors who hold no valid contract for this work with the City Council of the City of Black Diamond. Under the contracting authority granted in state law the City may contract and be contracted with by and through its Council. She asked Attorney Glenn to please comment on this provision.

Attorney Glenn reported that if they are talking about general contracting authority, which he believes she is, that by statute it is granted to the Council in terms of approving contracts. Bottom line on it is, it's clear the Council has the authority to execute contracts, and that that is an issue that is before this Council, partially because of an ordinance which was adopted some years ago. Now in this case, as he understands it, the Council is exercising authority by approving or not approving payment on contracts that were not reviewed and not had the opportunity to approve. That is subject to your authority and obviously there is an issue that can be presented if payments are made that you did not authorize. There are certain provisions in the code and specific provisions in statute as to the duties of the elected officials who approved those or issued them, and that probably will come up eventually before this Council.

Attorney Linehan commented that it's usually customary if an attorney is going to give an extensive dissertation about the law that the Council waive attorney client privilege so the attorney may speak freely without violating the City's attorney client privilege – that's been his custom.

Attorney Glenn stated he could simply indicate it's not too difficult to look at the statutes and to look at the City's own code as what sanctions may be imposed if payments are made contrary to the authority – enough said.

Mayor Benson noted there have been three attorneys that have said the exact opposite of what Attorney Glenn said.

Councilmember Morgan stated in the light of those comments she asked Councilmember Weber if he would be able to accept contact information from Mr. Williamson for these companies so we can set up a mutually agreeable time for the finance committee (that is you and me) to meet with these company's representatives to discuss what can be done about the situation where we have been withholding payment of vouchers. Councilmember Weber stated he could look in to that.

- 2) **Payroll** – August 31, 2017 – No. 19391 through No. 19407 and ACHs in the amount of \$275,443.13

Councilmember Edelman **moved** to accept the payroll; **second** Councilmember Weber. Motion **passed** 4-0.

- 3) **Minutes** – Council Meeting of September 7, 2017

Councilmember Weber **moved** to accept the meeting minutes from the Council meeting on September 7, 2017; **second** Councilmember Morgan. Motion **passed** 4-0.

DEPARTMENT REPORTS: None

MAYOR'S REPORT:

Mayor Benson updated Councilmembers on the South County Area Transportation Board (SCATBd) meeting she attended on 9/12 in Tukwila where they reviewed the operating procedures for SCATBd. On 9/17 she attended a SCATBd meeting in SeaTac where the operating procedures were approved. She noted the next step is for them to come before Council; however, there is a short timeline to do this due to the King County Council's meeting schedule.

COUNCIL REPORTS:

Councilmember Morgan reported attending the King Conservation District meeting and discussed grants that have been awarded for farming and food in South King County. She noted the Conservation District's contribution and shared that Elk Run Farm was one recipient and discussed their program.

Councilmember Edelman reported attending the Fire Department Fundraiser breakfast for cancer; PIC and Pre-PIC meetings on 9/13; meeting to review vouchers; continue to serve lunch for the seniors along with Councilmember Deady and Mayor Benson. She noted that at the pre-PIC meeting in October the speaker will be Ann Macfarlane of Jurassic Parliament. She shared that the Harvest Moon Auction and Dinner at the Black Diamond Community Center will be held on October 7th and encouraged everyone to support his event. She also discussed Councilmember Reagan Dunn presenting the Community Center with a used replacement van to shuttle seniors to and from activities.

Councilmember Weber reported that he is looking at the budget stuff coming up next week and past vouchers. He commented on the issue around the serial contracting and not approving those invoices and noted that he had May Miller telling him last year at a meeting that serial contracts are a red flag to the state auditor. It's about trying to follow the rules, it's not about shutting anything down.

Councilmember Pepper shared some city priorities and outcomes from the legislative session that just ended and discussed those items. She also noted the Washington State's

Arts Commission awarded 403,997 to 116 arts organizations and the project support program seeks to expand arts participation in communities across Washington State by providing funding and services to non profit art organizations, arts group, community service groups, local art agencies, non profit organizations, and tribal governments so they may develop and deliver arts events that engage, enrich, unite, and strengthen local and statewide communities.

ATTORNEY REPORT: None

PUBLIC COMMENTS:

Johna Thomson, Black Diamond spoke to Council.

Patrick Nelson, Black Diamond spoke to Council.

Leslie Cooley, Black Diamond spoke to Council.

Kristen Bryant, Bellevue spoke to Council.

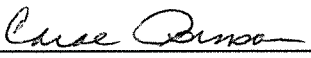
EXECUTIVE SESSION: None

ADJOURNMENT:

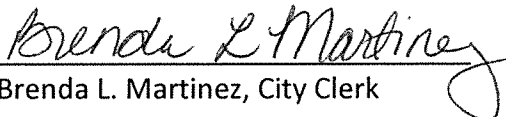
Councilmember Edelman **moved** to adjourn the meeting; **second** Councilmember Morgan. Motion **passed** 4-0.

Meeting ended at 7:58 p.m.

ATTEST:



Carol Benson, Mayor



Brenda L. Martinez, City Clerk