

BLACK DIAMOND CITY COUNCIL MINUTES
December 15, 2016 Regular Business Meeting
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: Jamey Kiblinger, Police Chief; David Linehan, City Attorney; Kevin Esping, Facilities Equipment Coordinator; Brian Martinez, Police Commander; Brian Lynch, Sergeant; May Miller, Finance Director; Scott Hanis, Capital Projects/Program Manager; Deanna Humphreys, Police Clerk; and Brenda L. Martinez, City Clerk.

APPOINTMENTS, ANNOUNCEMENTS, PROCLAMATIONS AND PRESENTATIONS:

Mayor Benson read a letter the City received from Association of Washington Cities Risk Management Services Agency regarding the lawsuit filed by CCD Black Diamond Partners, LLC. She also read a litigation hold letter from Allied Law and noted it being sent out to all Councilmembers and City staff.

Councilmember Pepper asked to be recognized several times.

Mayor Benson announced it is public comments.

Councilmember Pepper appealed the decision of the chair several times.

Councilmember Morgan stated Councilmember Pepper appealed the decision of the chair and that means you have to take a vote. Councilmember Pepper stated, "you have to take a vote".

Mayor Benson stated we are on public comments.

Councilmember Pepper stated I am asking to be recognized and further stated, Madam Chair needs to take a vote.

There was Council discussion and Councilmember Pepper stated she would like to have the floor and further stated she appealed the decision of the chair; and this requires a vote. She further stated the vote is the Councilmembers who agree with you, say yes; Councilmembers that don't agree with you, say no.

Mayor Benson noted to Councilmember Pepper she is not the Chair and let Councilmember Pepper know we are following the agenda and will get back to her after public comments. Councilmember Pepper again appealed the decision of the chair.

Mayor Benson called Councilmember Pepper out of order.

Councilmember Pepper appealed the decision of the chair and asked for a voice vote.

Mayor Benson called Councilmember Pepper out of order, again.

Councilmember Pepper continued with the voice vote and stated if you are in favor of the Mayor's decision then vote yes and if you disagree with the Mayor's decision vote no.

Councilmember Pepper asked Councilmember Deady how she would like to vote. No response from Councilmember Deady.

Councilmember Morgan called point of order for the public to be quiet please.

Councilmember Deady stated she would like to be recognized, and Councilmember Pepper stated right now, we are in the middle of a vote.

Councilmember Pepper asked Councilmember Morgan how she would like to vote. Councilmember Morgan stated she votes against the decision of the Mayor.

Councilmember Pepper asked Councilmember Edelman how she would like to vote. No response from Councilmember Edelman.

Mayor Benson stated to Councilmember Pepper that she does not get to call for a vote and reminded Councilmember Pepper this is time for public comments.

Councilmember Pepper asked Councilmember Weber how he would like to vote. Councilmember Weber voted against the Mayor's decision.

Councilmember Pepper stated she would vote against the Mayor's decision and the Council has voted against the Chair's decision and Councilmember Pepper has the floor.

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Morgan to adopt a resolution authorizing a professional services contract with Kevin Connelly for registered parliamentary services.

There was Council discussion on this.

Councilmember Edelman stated she has the floor.

Councilmember Morgan called point of order, germane to the subject.

Mayor Benson told Councilmember Pepper she cannot run the meeting.

There was continued Council discussion.

Councilmember Edelman asked the audience to please sit down and be quiet.

Mayor Benson called order in the chambers.

Councilmember Pepper asked if we are going to take the vote. Mayor Benson conceded and after the vote was taken told Councilmember Pepper that she has no authority.

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

There continued to be Council discussion on the above item.

Point of order raised by Councilmember Pepper to Councilmember Deady.

Point of order raised again by Councilmember Pepper, courtesy 6.3.

PUBLIC COMMENTS:

Leslie Cooley, Black Diamond spoke to Council.

Gary Davis, Black Diamond spoke to Council.

Brock Deady, Black Diamond spoke to Council.

Robbin Taylor, Black Diamond spoke to Council.

Bob Edelman, Black Diamond spoke to Council.

Sam Pace, King County spoke to Council.

Kayla Anderson, Black Diamond spoke to Council.

Judy Carrier, Auburn spoke to Council.

Pat Nelson, Black Diamond spoke to Council.

Councilmember Pepper noted she has item number 26; a Resolution Approving Legal Services for the City, she stated she has a motion regarding the agenda, an urgent item.

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Morgan that we suspend the rules to immediately approve this resolution titled a Resolution Approving a Contract between the City of Black Diamond and Lighthouse Law Group.

Councilmember Pepper spoke to her motion and stated first, because there is a legal deadline related to a lawsuit the City needs to take action tonight. She noted this is why she moved to suspend the rules, so we can approve this resolution tonight. Second, she stated the City has been operating without valid legal services for months in conflict with RCW 35A.12.090 that requires the City have legal services. The Mayor has no authority to

pick the City Attorney in Black Diamond. Our code does not define an appointed office of City Attorney, therefore, the Council contract authority under RCW 35A.11.0.1 means the Council selects the Attorney; the fact that Kenyon Disend is operating under illegal serial contracts and has been voted against multiple times by Council gives them a conflict of interest in representing our City. She further noted that she spoke to a number of Attorneys about the need to deal with the lawsuit against the City and the City's other legal needs. She noted that she is pleased to highly recommend to the Council the firm of Lighthouse Law. Again, she noted her motion was to suspend the rules and immediately approve the resolution approving a contract between the City of Black Diamond and Lighthouse Law.

Councilmember Edelman expressed her concern that the rest of the Council doesn't know anything about this and noted this is the first-time hearing about this contract.

Councilmember Edelman **moved** to **amend** the motion stating pursuant to the requirements of Black Diamond Municipal Code 2.66.020, that we approve the retention of legal counsel to represent Councilmember Pat Pepper in the OPMA lawsuit that has been filed by CCD Black Diamond Partners against the City, the City Council, and three individual Councilmembers, and further, that because of the actual or potential for conflict of interest between Councilmember Pat Pepper and the City, that this legal representation of Councilmember Pat Pepper be by an attorney other than the current City Attorney, who has already advised that his ethical obligations to the City likely prevent him from representing both the City and the individually named Councilmembers in the lawsuit.

During the above amended motion, an out of order was called by Councilmember Morgan stating there is already a motion and second on the floor and the need to take care of the motion on the floor. Councilmember Morgan continued to call Councilmember Edelman out of order.

Councilmember Deady **seconded** the amended motion and **moved** to **amend** the amended motion that pursuant to Council Rule 8.5.2 that Councilmember Pat Pepper be disqualified from voting on the motion on whether to provide her legal representation at the City's expense in the OPMA lawsuit. Under Council 8.3.1 and 8.5.1, a Councilmember is required to abstain from voting when she has a conflict of interest and the City Attorney advises that abstention is required because of the conflict of interest.

During the above amendment Councilmember Morgan called out of order. Councilmember Morgan also called a point of order as this is not germane to the subject at hand. In unison both Councilmembers Morgan and Pepper called "out of order".

Again, during the above amendment Councilmember Pepper appealed. Mayor Benson called Councilmember Pepper out or order.

Councilmember Edelman **seconded** Councilmember Deady's **amended motion**.

Councilmember Pepper noted that a motion and a second are already on the floor and there is a need to take a vote.

Councilmember Morgan stated we need to take a vote, and Councilmember Pepper concurred.

Councilmember Deady continued to speak to her amended motion and stated when a Councilmember refuses to abstain from voting on a matter in which she has a monetary self-interest, despite the City Attorney's opinion that abstention is required, then Rule 8.5.2 allows the remaining councilmembers to vote to disqualify the conflicted Councilmember from voting on the issue on which she has a conflict. Councilmember Pat Pepper may not vote on this motion to disqualify, as stated in Council Rule 8.5.2. And if we vote affirmatively on this motion to disqualify, then she will be disqualified from voting on the motion to provide legal representation.

During the above statement Councilmember Morgan raised a point of order for comments to remain germane and speaking to a different motion than the one that is on the floor. Councilmember Morgan continued to call out of order and to speak to the motion that is on the floor and if this continues we need to recess the meeting until tomorrow.

Mayor Benson noted she agrees with that and Councilmember Pepper is disqualified.

Councilmember Edelman called for the vote.

There was discussion on the motions on the floor and the process to clear them up.

Attorney Linehan stated that he understands that Councilmember Edelman's motion was an amendment to the pending motion from Councilmember Pepper. Councilmember Deady's motion was an amendment to Councilmember Edelman's motion.

Councilmember Pepper called point of order for Councilmember Edelman's comments to remain germane and for courtesy and decorum. Councilmember Pepper asked that Councilmember Edelman's amended motion and Councilmember Deady's amendment to the amended motion be read again.

Mayor Benson called upon Councilmember Edelman to re-read the motion.

Councilmember Edelman re-read her amended motion which stated pursuant to the requirements of Black Diamond Municipal Code 2.66.020, that we approve the retention of legal counsel to represent Councilmember Pat Pepper in the OPMA lawsuit that has been filed by CCD Black Diamond Partners against the City, the City Council, and three individual Councilmembers, and further, that because of the actual or potential for conflict of interest between Councilmember Pat Pepper and the City, that this legal representation of Councilmember Pat Pepper be by an attorney other than the current City Attorney, who has already advised that his ethical obligations to the City likely present him from representing both the City and the individually named Councilmembers in the lawsuit.

Councilmember Deady stated she seconded that and said she'd like to amend that motion and moved pursuant to Council Rule 8.5.2 that Councilmember Pat Pepper be disqualified from voting on the motion on whether to provide her legal representation at the City's expense in the OPMA lawsuit. Under Council Rule 8.3.1 and 8.5.1, a Councilmember is required to abstain from voting when she has a conflict of interest and the City Attorney advises that abstention is required because of the conflict of interest.

Councilmember Deady then noted there was a discussion and she read the following:

When a Councilmember refuses to abstain from voting on a matter in which she has a monetary self-interest, despite the City Attorney's opinion that abstention is required, then Rule 8.5.2 allows the remaining Councilmembers to vote to disqualify the conflicted Councilmember from voting on the issue on which she has a conflict. Councilmember Pat Pepper may not vote on this motion to disqualify, as stated in Council Rule 8.5.2. And, if we vote affirmatively on this motion to disqualify, then she will be disqualified from voting on the motion to provide legal representation.

Mayor Benson noted she agreed with that.

There was Council discussion around the amendment to the amendment.

Councilmember Pepper discussed the amendments and noted she will be voting no.

Vote: 2-3 (Morgan, Weber, Pepper) amendment to disqualify Councilmember Pepper from voting. Councilmember Pepper stated she voted no so she is not disqualified. Mayor Benson noted Councilmember Pepper is disqualified from voting therefore it was a **tie** vote 2-2 (Morgan, Weber). Mayor Benson **broke** the tie vote. Amended motion to disqualify Councilmember Pepper from voting **passed** 3-2 (Morgan, Weber).

During the above vote Councilmember Pepper and Morgan both stated that Councilmember Pepper is not disqualified. Councilmember Pepper continued to say she is voting no and that her vote counts.

Also during the above vote City Attorney Linehan read Council rule 8.5.2, and noted this language is in rules pre-2016 and post 2016. He read refusal to abstain. Should the Mayor or a Councilmember refuse to abstain from participation and voting on an issue after the City Attorney has determined that abstention is necessary, the challenged person may be disqualified from participating and voting on that issue upon a vote to disqualify that is passed by the majority of other Councilmembers present or eligible to vote.

Councilmember Pepper stated she votes no and is eligible to vote as she is an elected Councilmember and represents hundreds of people and has the right to vote in this meeting and she votes no and it counts.

Councilmember Pepper commented on moving on to the next motion from Councilmember Edelman.

Councilmember Edelman commented on her amended motion and stated the following:

I (Councilmember Edelman) oppose this motion and believe it should be rejected pursuant to BDMC 2.66.030, which clearly states that “in no event shall protection be offered under this chapter by the City to: 1. Any dishonest, fraudulent, criminal, willful, intentional, or malicious act or course of conduct of any official or employee.”

Councilmember Edelman further stated, the claims asserted against Councilmember Pepper are for alleged “willful” and “intentional” violations of the OPMA, not mere negligence or carelessness. This is the basis on which AWC RMSA denied insurance coverage for this lawsuit, and it only makes sense that the City also deny paying for the defense or indemnification of Councilmember Pepper on this basis.

Councilmember Edelman also noted that under BDMC 2.66.040; the determination of whether a City official should be afforded a defense at City expense is a “legislative determination of the Council,” based on a “recommendation of the mayor”. So, we call the vote on this motion, I would ask the Mayor for her recommendation whether the City should pay to defend or indemnify Councilmember Pat Pepper.

Mayor Benson stated she votes against paying to defend or indemnifying Pat Pepper. There was Council discussion and Mayor Benson clarified this was a recommendation.

Councilmember Edelman called the question *of the motion to provide legal defense and indemnification for Pat Pepper.*

Clarification was sought on the motion.

Councilmember Edelman re-read the motion and stated the motion is to provide legal defense and indemnification for Pat Pepper.

Vote: 3-2 (Edelman, Deady). Mayor Benson noted that Councilmember Pepper cannot vote therefore the motion to provide legal defense and indemnification for Councilmember Pepper **failed** due to a **tie** vote 2-2 (Edelman, Deady). There continued to be discussion on whether or not Councilmember Pepper can vote.

There continued to be discussion on whether or not Councilmember Pepper can vote.

Councilmember Pepper stated there is a main motion on the floor that is left. She further stated we did the Tami Deady motion amendment and we did the Janie Edelman amendment and now we are back to the main motion.

Councilmember Edelman stated she has another amendment and **moved** pursuant to the requirements of Black Diamond Municipal Code 2.66.020, that we approve the retention of

legal counsel to represent Councilmember Brian Weber in the OPMA lawsuit that has been filed by CCD Black Diamond Partners against the City, the City Council, and three individual Councilmembers, and further, that because of the actual or potential for conflict of interest between Councilmember Brian Weber and the City, that this legal representation of Councilmember Brian Weber be by an attorney other than the current City Attorney, who has already advised that his ethical obligations to the City likely prevent him from representing both the City and the individually named Councilmembers in the lawsuit.

Councilmember Deady **seconded** the **amended motion** and **moved** to amend the **amended motion** that pursuant to Council Rule 8.5.2 that Councilmember Brian Weber is disqualified from voting on the motion on whether to provide his legal representation at the City's expense in the OPMA lawsuit. Under Council Rule 8.3.1 and 8.5.1, a Councilmember is required to abstain from voting when he has a conflict of interest and the City Attorney advises that abstention is required because of the conflict of interest; **second** Councilmember Edelman.

Councilmember Deady spoke to her amendment of the amended motion and stated when a Councilmember refuses to abstain from voting on a matter in which he has a monetary self-interest, despite the City Attorney's opinion that abstention is required, then Rule 8.5.2 allows the remaining councilmembers to vote to disqualify the conflicted Councilmember from voting on the issue on which he has a conflict. Councilmember Brian Weber may not vote on this motion to disqualify, as stated in Council Rule 8.5.2. And if we vote affirmatively on this motion to disqualify, then he will be disqualified from voting on the motion to provide legal representation.

Councilmember Edelman called for the question.

Councilmember Morgan noted the City does not have a City Attorney at this point and also noted this was read out twice and we first have to vote on the amendment.

Vote: 2 – 3 (Morgan, Weber, Pepper) on **amended motion** to disqualify Councilmember Weber from abstaining from voting. Mayor Benson stated Councilmember Weber cannot vote so it is **tie** vote 2-2 (Pepper, Morgan). Councilmember Morgan stated Councilmember Weber has a right to vote as he is a member of this body. Mayor Benson **broke** the **tie** vote. Amended motion to disqualify Councilmember Weber from voting **passed** 3-2 (Morgan, Pepper).

Councilmember Edelman spoke to her amended motion regarding providing legal defense and indemnification for Brian Weber and stated the following:

I, (Councilmember Edelman), oppose this motion and believe it should be rejected pursuant to BDMC 2.66.030, which clearly states that "in no event shall protection be offered under this chapter by the City to: 1. Any dishonest, fraudulent, criminal, willful, intentional, or malicious act or course of conduct of any official or employee."

Mayor Benson called point of order for audience to be quiet.

Councilmember Edelman stated she has the floor as an audience member continued to speak out.

Councilmember Edelman added the claim asserted against Councilmember Brian Weber are for alleged “willful” and “intentional” violations of the OPMA, not mere negligence or carelessness. This is the basis on which AWC RMSA denied insurance coverage for this lawsuit and it only makes sense that the City also deny paying for the defense or indemnification of Councilmember Brian Weber on this basis.

I, (Councilmember Edelman) also note that under BDMC 2.66.040, the determination of whether a City official should be afforded a defense at City expense is a “legislative determination of the council,” based on a “recommendation of the mayor”. So, before we call the vote on this motion, I would ask the Mayor for her recommendation whether the City should pay to defend or indemnify Councilmember Brian Weber.

Mayor Benson recommended that we deny coverage for Brian Weber.

There was Council discussion.

Councilmember Morgan called for the question.

Councilmember Pepper called for the question.

Councilmember Pepper asked for clarification on what is being voted on.

Councilmember Edelman stated she made a motion to provide legal defense and indemnification for Councilmember Brian Weber.

Vote: 3-2 (Edelman, Deady). Mayor Benson announced the amended motion to provide legal defense and indemnification for Councilmember Brian Weber **failed** due to a **tie** vote 2-2 (Edelman Deady) as Councilmember Weber cannot vote.

There continued to be discussion on whether or not Councilmember Weber can vote.

Councilmember Edelman announced she has another amendment and **moved** pursuant to the requirements of Black Diamond Municipal Code 2.66.020, that we approve the retention of legal counsel to represent Councilmember Erika Morgan in the OPMA lawsuit that has been filed by CCD Black Diamond Partners against the City, the City Council, and three individual Councilmembers, and further, that because of the actual or potential for conflict of interest between Councilmember Erika Morgan and the City, that this legal representation of Councilmember Erika Morgan be by an attorney other than the current City Attorney, who has already advised that his ethical obligations to the City likely prevent him from representing both the City and the individually named Councilmembers to the lawsuit.

Councilmember Morgan called for the vote. Mayor Benson noted there is no vote on the floor at the moment.

Councilmember Deady **seconded** the amended motion and **moved** to amend the amended motion that pursuant to Council Rule 8.5.2 that Councilmember Erika Morgan be disqualified from voting on the motion on whether to provide her legal representation at the City's expense in the OPMA lawsuit. Under Council rule 8.3.1 and 8.5.1, a Councilmember is required to abstain from voting when she has a conflict of interest and the City Attorney advises that abstention is required because of the conflict of interest; **second** Councilmember Edelman.

Councilmember Deady spoke to her amendment and stated the following:

When a Councilmember refuses to abstain from voting on a matter in which she has a monetary self-interest, despite the City Attorney's opinion that abstention is required, then Rule 8.5.2 allows the remaining councilmembers to vote to disqualify the conflicted Councilmember from voting on the issue on which she has a conflict. Councilmember Erika Morgan may not vote on this motion to disqualify, as stated in Council Rule 8.5.2. And if we vote affirmatively on this motion to disqualify, then she will be disqualified from voting on the motion to provide legal representation.

Vote: 2-3 (Morgan, Weber, Pepper) amended motion to disqualify Councilmember Morgan from voting. Mayor Benson stated Councilmember Morgan cannot vote so it is **tie** vote 2-2 (Weber, Pepper). Councilmember Morgan stated she has a right to vote as she is part of the Council. Mayor Benson **broke** the **tie** vote. **Amended motion** to disqualify Councilmember Morgan from voting **passed** 3-2 (Weber, Pepper).

Councilmember Edelman spoke to her amended motion regarding providing legal defense and indemnification for Councilmember Erika Morgan and stated the following:

I, (Councilmember Edelman), oppose this motion and believe it should be rejected pursuant to BDMC 2.66.030, which clearly states that "in no event shall protection be offered under this chapter by the City to: 1. Any dishonest, fraudulent, criminal, willful, intentional, or malicious act or course of conduct of any official or employee."

The claims asserted against Councilmember Erika Morgan are for alleged "willful" and "intentional" violations of the OPMA, not mere negligence or carelessness. This is the basis on which AWC RMSA denied insurance coverage for this lawsuit, and it only makes sense that the City also deny paying for the defense or indemnification of Councilmember Erika Morgan on this basis.

I, (Councilmember Edelman) also noted that under BDMC 2.66.040, the determination of whether a City official should be afforded a defense at City expense is a "legislative determination of the council", based on a "recommendation of the mayor." So, before we call the vote on this motion, I would ask the Mayor, again for her recommendation whether the City should pay to defend or indemnify Councilmember Erika Morgan.

Mayor Benson recommended the City does not pay to defend Erika Morgan.

Councilmember Edelman called for the question.

Vote: 3-2 (Edelman, Deady). Mayor Benson announced the amended motion to provide legal defense and indemnification for Councilmember Erika Morgan **failed** due to a **tie** vote 2-2 (Edelman Deady) as Councilmember Morgan cannot vote. Councilmembers Morgan and Pepper stated Councilmember Morgan has the right to vote and it is not a tie vote. .

Councilmember Pepper called the question on the **main motion** regarding the agenda and it is that we suspend the rules immediately and approve this resolution titled a Resolution approving a contract between the City of Black Diamond and Lighthouse Law Group. Councilmember Morgan had seconded the motion and Councilmember Pepper called the question again.

Mayor Benson noted there is discussion so everyone has a chance to respond.

Councilmember Pepper noted there has been discussion and called for the vote and asked for a roll call vote.

Councilmember Morgan called for the vote.

Councilmember Pepper called for the question.

Mayor Benson said everyone gets a chance for discussion.

Councilmember Pepper appealed the decision of the chair and stated she called for the question and asked for a roll call vote.

Councilmember Deady raised a point of order on Councilmember Pepper and stated that she has the right to have a discussion on this topic.

Councilmembers Pepper and Morgan called point of order.

There was Council discussion.

Councilmember Pepper stated she has called the question and there is no more discussion.

There was continued Council discussion.

Councilmember Pepper started to call the roll call vote.

Mayor Benson called Councilmember Pepper out of order.

Councilmember Pepper appealed the decision of the chair and stated she called for the question and asked for a roll call vote.

Councilmember Pepper called the question and stated that she has called for a roll call vote.

There was continued Council discussion.

Councilmember Pepper called the question, again.

Councilmember Pepper called the Chair out of order.

There was continued Council discussion.

At 8:10 p.m. Mayor Benson called a five -minute recess.

Councilmember Pepper stated, “you can’t call a recess unless there is a motion and voted on by the body.”

There was discussion on the process to call a recess. Audio was turned off at this time and the Clerk left the Chambers.

At 8:16 p.m. Mayor Benson called the meeting back to order.

There continued to be discussion from Councilmember Deady on the contract to hire an attorney.

Councilmember Morgan noted there was already a vote taken on this resolution. She noted that two Councilmembers left the room in violation of their duties to this space on the table, they left the room.

Mayor Benson noted that Councilmember Morgan has no authority to run the meeting.

Councilmember Morgan responded she has to run the meeting when the presider leaves her post and it is in the state law 42.30.050 and we took the vote and passed this item and let’s proceed back on to the regular agenda.

City Attorney Linehan asked if he was correct that the Police Chief ordered the room cleared for safety reasons and that is the reason why the Mayor was leaving the room?

Mayor Benson responded yes that is correct.

A point of order was raised by Councilmember Morgan toward Councilmember Edelman.

Councilmember Edelman commented she has been recognized and has the floor.

Councilmember Morgan told her to “stay in order”.

Point of order was raised by Councilmember Edelman to Councilmember Morgan for making snide comments in public.

Council discussion continued with Councilmember Edelman discussing the RFP process.

Councilmember Weber discussed the need for a vote for a recess and the need for an RFP for an Attorney and there was no response to his inquiry of when this would happen.

Councilmember Edelman commented on the applicants that were received from the RFP that was already put out by the City and their qualifications and experience.

Councilmember Deady asked what two Councilmembers brought this forth.

Councilmember Pepper responded she is bringing this forth. Councilmember Morgan stated she seconded it.

Councilmember Deady asked each of the Councilmembers if they had a chance to read this. Councilmember Weber said no, Councilmember Morgan said she read it this afternoon. Councilmember Deady noted that she has it on recording that they have all said it is okay for Mayor Benson to continue with serial contracts. She noted they all said, you can just do serial contracts. She noted the concern over Council giving mixed messages all the time. She noted concern that Mr. Weber hasn't read it but is agreeing to it.

There was Council discussion over contract authority and Councilmember Morgan pointed out that all contracting authority resides with the Council. She noted the Mayor's responsibility is to execute and govern.

Councilmember Pepper stated she would like to read the whereas' of this resolution and stated we voted on this and would like to remind the Chair that there is no recess and no adjournment without a motion and vote of the body.

Mayor Benson stated that is not true.

Councilmember Pepper stated she has the floor and read the whereas' and sections of the resolution.

Councilmember Deady called for the vote.

Councilmember Weber called a point of order.

Councilmember Pepper stated she has the floor and stated this resolution was already voted on.

Mayor Benson noted the vote was taken during recess and the vote doesn't count as it wasn't recorded.

Councilmember Morgan stated the vote has been taken and recorded (she held up a handheld recorder).

Mayor Benson called for the vote, again. She noted this vote needs to be done at a regular meeting, not during recess.

Vote on main motion: Main motion **passed** 3-2 (Edelman, Deady).

Councilmember Edelman commented that she doesn't think that Mr. Weber voted. Councilmember Weber noted he did vote. She also noted that most of these whereas has to deal with the lawsuit. She noted that they have no authority to run out and just hire an attorney.

Councilmember Deady asked who wrote the contract, and Councilmember Pepper stated "the lawyer".

Councilmember Morgan spoke about lawyers writing their own contracts.

Mayor Benson stated she is going to deny the hiring of an attorney.

There was Council discussion.

Mayor Benson stated, "I don't have to take a vote". She further stated she can deny the contract.

Councilmember Pepper appealed the decision of the chair to deny the contract.

Mayor Benson called Councilmember Pepper out of order.

Councilmember Morgan seconded the appeal.

Councilmember Pepper again appealed the decision of the chair.

Mayor Benson stated again, she will deny this contract and will move on to the consent agenda.

Councilmember Pepper called for the vote on the appeal.

Mayor Benson stated she would entertain a motion for the consent agenda.

CONSENT AGENDA:

Councilmember Edelman **moved** to adopt the consent agenda; **second** Councilmember Deady.

There was continued Council discussion over the vote of the appeal.

Councilmember Edelman stated we have a motion and a second for the consent agenda.

Councilmember Edelman called the question on her motion.

Mayor Benson stated several times “you cannot appeal my decision”.

There was continued discussion over authority.

Councilmember Pepper noted the chair has made a decision to deny a contract the Council has voted for. If you agree, say yes and you disagree, say no. Morgan, Weber, and Pepper disagree with the Mayor’s decision.

There was Council discussion.

Councilmember Edelman again called the question.

Councilmember Morgan noted needing some vouchers pulled from the consent agenda. They are 44181 and 44209 both for RH2 Engineering from the December 15th batch.

Councilmember Morgan spoke to the motion.

A **motion** was made by Councilmember Morgan and **seconded** by Councilmember Weber for both vouchers for RH2 are not approved for payment until this is cleared up.

Councilmember Morgan withdrew her above motion.

Councilmember Edelman, under protest, withdrew her motion regarding the consent agenda.

Councilmember Morgan **moved** to place the two RH2 vouchers 44181 and 44209 under new business and to approve the rest of the claims checks and to approve the payroll and remove the Council meeting minutes under new business too. **Second** Councilmember Weber.

There was Council discussion.

Vote: Motion **passed** 5-0.

The consent agenda was approved as follows.

1) Claim Checks – December 15, 2016 - No. 44176 through No. 44227 (void

44155) and EFTs in the amount of \$67,039.58 (except 44181 and 44209)

- 2) **Payroll** – November 30, 2016 No. 19241 – No. 19254 (voids 19255) and EFTs in the amount of \$268,322.61

PUBLIC HEARINGS: None

UNFINISHED BUSINESS:

- 4) **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 Weber to pull 44096 (BHC) and 44119 (RH2).

There was Council discussion.

Point of order was raised by Councilmembers Pepper and Morgan for comments to remain germane.

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

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to approve the rest of the November 17, 2016 claim checks with the exception of 44096 and 44119. Motion **passed** with all voting in favor (5-0).

- 5) **Claim Checks** – December 1, 2016 – No. 44126 through No. 44175 and EFTs in the amount of \$393,922.99

A **motion** was made by Councilmember Morgan and **seconded** by Councilmember Weber to pull the Icicle Creek, Kenyon Disend, and RH2 claim checks from the batch as they are not approved, and Kenyon Disend is not authorized to work for the City. Motion **passed** 3-2 (Edelman, Deady).

A **motion** was made by Councilmember Morgan and **seconded** by Councilmember Weber to approve for payment the rest of the December 1, 2016 Claim Checks. Motion **passed** with all voting in favor (5-0).

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Morgan that items 6-10, 12, 14, and 22 not be taken up by the Council this evening.

Councilmember Edelman called a point of order for rationale.

Councilmember Pepper stated she has the floor.

Councilmember Pepper spoke to her motion and there was Council discussion.

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

The following items were removed from the agenda.

~~6) **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~~

~~7) **Minutes** – Special Meeting of October 18, 2016, Special Meeting of October 27, 2016, and Council meeting of November 3, 2016~~

~~8) **Minutes** – Council Work Session of November 10, 2016 and Council Meeting of November 17, 2016~~

~~9) **AB16-063A** – Ordinance Granting Franchise Agreement with CCD Black Diamond Partners, LLC~~

~~10) **AB16-064A** – Ordinance Granting Franchise Agreement with Astound Broadband, LLC~~

~~12) **AB16-077A** – Resolution Confirming Mayor’s Re-appointment to Planning Commission Pos. # 3~~

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

~~22) **AB16-086** – Resolution Adopting RH2 Agreement for On-Call Services for Public Works~~

11) **AB16-071A** - Ordinance Approving Interfund Loan from Sewer Capital Reserve Fund to Equipment Replacement for Purchase of Four Police Vehicles in 2017

Finance Director Miller reported to Council on this item.

A **motion** was made by Councilmember Morgan and **seconded** by Councilmember Deady to adopt an ordinance approving an interfund loan from the Sewer Capital & Reserve Fund to the Equipment Replacement Fund for the replacement of four police vehicles for 2017. Motion **passed** 4-1 (Weber).

13) **AB16-078A** – Resolution Confirming Mayor’s Re-appointment to Planning Commission Pos. #5

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Weber to confirm the Mayor’s re-appointment of Tom Ekberg to Position #5 of the Planning Commission. Motion **passed** with all voting in favor (5-0).

NEW BUSINESS:

15) AB16-079 – Ordinance Amending the 2016 Budget

Finance Director Miller reported to Council on this item.

There was Council discussion on this item.

Councilmember Edelman stated let the record show everyone is biting their lips and there is no response whatsoever.

Councilmember Edelman stated she has the floor.

Councilmember Pepper called a point of order for comments to remain germane.

Council discussion continued.

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

16) AB16-080 – Ordinance Approving Sewer Pass-Through Rate Increase

Finance Director briefed Council on this proposed ordinance.

A **motion** was made by Councilmember Morgan and **seconded** by Councilmember Deady to adopt an ordinance relating to adjustments to sewer charges; amending section 13.25.010 of the Black Diamond Municipal Code to increase the sewer rate commensurate with the increase imposed by King County Metro on its customers; and establishing an effective date of the new rate increase on sewer customers. Motion **passed** with all voting in favor (5-0).

17) AB16-081 – Resolution Declaring Certain City Property Surplus

Facilities Equipment Coordinator Kevin Esping briefed Council on the proposed items being declared as surplus.

There was Council discussion on this item.

Councilmember Morgan noted the item was for first reading and recommendation that it go before the Government Operations Committee.

A **motion** was made by Councilmember Deady and **seconded** by Councilmember Edelman to suspend the rules and have the Council move to pass this tonight. Motion **passed** 3-2 (Morgan, Pepper)

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to adopt a resolution declaring certain City property surplus to the needs of the City. Motion **passed** 4-1 (Pepper).

Councilmember Edelman noted to the Mayor let the record show that Councilmember Morgan did not vote on this.

18) AB16-082 – Resolution Authorizing Interlocal Agreement with AWC RMSA

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. Motion **passed** with all voting in favor (5-0).

19) AB16-083 – Resolution Authorizing Agreement with Black Diamond Community Center

Councilmember Pepper noted this item is for first reading and assigned to the Budget and Finance Committee.

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to adopt a resolution authorizing the Mayor to execute an agreement with the Black Diamond Community Center for the City's payment of \$10,000 for the Community Center's liability insurance for the year 2017.

There was Council discussion.

Councilmember Edelman **rescinded** her **motion**.

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Weber to suspend the rules to act on this item tonight. Motion **passed** with all voting in favor (5-0).

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to adopt a resolution authorizing the Mayor to execute an agreement with the Black Diamond Community Center for the City's payment of \$10,000 for the Community Center's liability insurance for the year 2017.

There was Council discussion.

Point of order raised by Councilmember Morgan as there needs to be a motion to suspend the rules to vote on this. It was noted there was already a motion passed on that.

Vote: Motion **passed** with all voting in favor (5-0).

20) AB16-084 – Ordinance Adopting 2012 Stormwater Manual for Western

Washington

Capital Projects/Program Manager Scott Hanis briefed Council on this item and recommended adoption.

A **motion** was made by Councilmember Deady and **seconded** by Councilmember Edelman to adopt an ordinance adopting new stormwater management regulations and amending Chapter 14.04 of the Black Diamond Municipal Code.

There was Council discussion.

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 Weber to adopt the ordinance that was amended by the Growth Management Committee.

There was Council discussion.

City Attorney Linehan clarified that since this motion is referring to the vetoed ordinance it would need a super majority vote in the affirmative to pass.

Vote: 3-2 (Edelman, Deady). Motion **failed** due to the failure of a super majority passing it.

21) AB16-085 – Resolution Adopting 2017 Stormwater Management Program

Capital Projects/Program Manager Scott Hanis briefed Council on this item and recommended adoption.

There was Council discussion and a suggestion from Councilmember Edelman for Councilmember Pepper to work with staff to put together an educational program.

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to adopt a resolution adopting the Stormwater Management Program (SWMP) Plan for 2017 update. (No vote taken as below motion takes precedence).

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

23) AB16-087 – Resolution Accepting 2015-2017 Stormwater Capacity Grant

Capital Projects/Program Manager Scott Hanis reported to Council on this item.

There was Council discussion.

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Morgan to postpone until the staff has let Council know how this money will be spent.

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

There was continued Council discussion around the \$25, 000 Grant and citizen taxpayer dollars.

Councilmember Edelman **motioned** to adopt resolution authorizing the Mayor to execute a grant agreement with the Department of Ecology for the 2015-2017 Stormwater capacity grant **seconded** Councilmember Deady.

Councilmember Weber stated to the Mayor there was a **motion** on the floor and it was **seconded** to table this item, postpone.

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

24) AB16-088 – Ordinance Adopting 2017 Budget

Finance Director Miller briefed Council on this proposed ordinance.

Mayor Benson asked Councilmember Weber if he was prepared in regard to the email he sent out yesterday. Councilmember Weber responded, "I do".

A **motion** was made by Councilmember Weber and **seconded** by Councilmember Edelman to adopt an ordinance adopting the 2017 budget. He further stated he would like to **move** to substitute his substitute ordinance and would like to speak to it. Councilmember Morgan **seconded** this motion to substitute his substitute ordinance. Motion **passed** 4-1 (Edelman)

Councilmember Edelman stated we need to have a reading from our City Attorney.

Councilmember Weber spoke to his motion and had the clerk distribute copies to the Councilmembers.

Mayor Benson read an excerpt from MRSC regarding budgets.

There was Council discussion on this item.

A **motion** was made by Councilmember Weber and **seconded** by Councilmember Pepper to **amend** his **motion** to hold a special meeting on December 19, 2016. No vote was taken as it was rescinded.

There was Council discussion on this motion and following discussion. Councilmember Weber **withdrew** his motion.

There was Council discussion over what dates work best for the Attorney and May Miller of Finance department to go over funds.

Councilmember Weber stated he has the floor still.

There was continued Council discussion over the budget.

An **amended motion** was made by Councilmember Weber and **seconded** by Councilmember Deady to pull his motion back and move to hold a special meeting at 5:00 p.m. on December 27, 2016. Motion **passed** 4-1 (Pepper).

Mayor Benson stated we can have an emergency ordinance that we adopt.

Attorney Linehan clarified the information for an emergency ordinance to take place.

Councilmember Weber noted the need to take a vote on the substitute agenda. Clerk noted this had been seconded. Motion **passed** 4-1 (Edelman)

25) AB16-089 – Resolution Regarding Contracting Procedures and Policies

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Morgan to adopt this resolution on contracting procedures and policies.

There was Council discussion.

City Attorney Linehan noted that many of the changes in this resolution contradict the Black Diamond Municipal code and resolution cannot override provision, needs to be adopted through an ordinance if any of these changes will go into effect.

Mayor Benson noted even if this resolution is adopted, she will deny it.

Mayor Benson raised a point of order to Councilmember Pepper.

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

Mayor Benson discussed further why the resolution will be denied.

Mayor Benson announced she is going to skip all the council reports and to directly to public comments.

DEPARTMENT REPORTS: NONE

MAYOR'S REPORT: NONE

COUNCIL REPORTS: NONE

PUBLIC COMMENTS:

Brock Deady, Black Diamond spoke to Council.

Terry Yankovich, Black Diamond spoke to Council.

Leslie Cooley, Black Diamond spoke to Council.

Jackie Buss, Black Diamond spoke to Council.

Mitch Neary, Black Diamond spoke to Council.

Colin Lund, OakPointe spoke to Council.

Kristen Bryant, Bellevue spoke to Council.

Lorraine Howard, Black Diamond spoke to Council.

Deanna Humphreys, Black Diamond spoke to Council.

Robbin Taylor, Black Diamond spoke to Council.

Daryl Buss, Black Diamond spoke to Council.

Judy Goodwin, Black Diamond spoke to Council.

Brian Derdowski, Bellevue spoke to Council.

Point of Order was raised by Councilmember Pepper.

Bob Edelman, Black Diamond spoke to Council.

Sam Pace, unincorporated Black Diamond spoke to Council.

Judy Watson, Black Diamond spoke to Council.

Dennis Boxx, Black Diamond spoke to Council.

Mayor Benson asked Council if anyone would like to reconsider the budget tonight and experience the happy holidays ahead.

There was brief Council discussion.

EXECUTIVE SESSION: None

ADJOURNMENT:

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

The meeting ended at 11:43:21 p.m.

ATTEST:

Carol Benson, Mayor

Katherine Allen, Deputy City Clerk