

RESOLUTION NO. 14-944

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, ACCEPTING NOTICE OF THE MAYOR'S REQUEST FOR LEGAL REPRESENTATION AND PROVIDING FOR REIMBURSEMENT OF THE MAYOR'S ATTORNEYS' FEES AND COSTS SUBJECT TO CHAPTER 2.66 BDMC THIS RESOLUTION AND A RESERVATION OF RIGHTS.**

**WHEREAS**, the City of Black Diamond has provided, pursuant to chapter 2.66 BDMC, for the indemnification of the officials and employees; and

**WHEREAS**, such policy, specifically BDMC 2.66.020 provides for the provision of “such legal representations as may be reasonably necessary to defend a claim...”; and

**WHEREAS**, the Mayor has provided notice pursuant to BDMC 2.66.050(a) of his request for representation pursuant to the policy in conjunction with a sexual harassment claim; and

**WHEREAS**, the indemnification provisions provide exclusions for dishonest, criminal, willful, intentional, or malicious acts or course of conduct, acts or courses of conduct “which is not performed on behalf of the City” and “any act or course of conduct which is outside of the scope of the official...service...with the City”; and

**WHEREAS**, the City Council cannot make a determination whether these exclusions apply until the investigation into the claim of sexual harassment has concluded;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON DOES RESOLVE AS FOLLOWS:**

**Section 1.** The City Council, pursuant to the requirements of Chapter 2.66 BDMC and reserving all rights and responsibilities set forth in such chapter, accepts the notice of the Mayor. The City Council finds that, until resolution of the claim of sexual harassment conflict exists, the City Attorney cannot represent the Mayor due to conflict.

**Section 2.** The City Council shall make a determination whether to reimburse reasonable legal costs incurred by the Mayor in defense of the claim of sexual harassment at the conclusion of the sexual harassment investigation, based on BDMC Section 2.66.030. This reimbursement of reasonable legal costs is subject to a full reservation of rights, including but not limited to the limitations provided in BDMC 2.66.020(c):

2.1 The application of the Mayor to any policy of insurance owned or applicable to the Mayor for coverage. Indemnity is secondary to any right of defense available to the Mayor under any personal policy of insurance.

2.2 Reimbursement is limited to the hourly rate established by contract for the City Attorney and attorney's fees that the City Council finds are "reasonable.". The Mayor is responsible for all attorney's fees and charges in excess of the rate for the City Attorney with regard to approved attorneys' fees and charges.

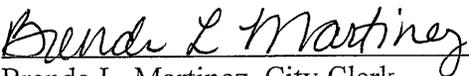
**Section 3.** The Mayor shall submit invoices from his attorney to the City for reimbursement after the conclusion of the sexual harassment investigation. The City Council reserves the right to approve reimbursement and indemnification following its determination of whether an exclusion applies and proof that no private policy of insurance exists or coverage has been denied.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 17TH DAY OF APRIL, 2014.**

CITY OF BLACK DIAMOND

By:   
Carol Benson, Mayor Pro Tem

ATTEST:

By:   
Brenda L. Martinez, City Clerk