

RESOLUTION NO. 17-1170

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON CLARIFYING THAT PARTICIPATION IN BINDING ARBITRATION RELATED TO THE MORT IS NOT AUTHORIZED AND FURTHER PARTICIPATION IS PROHIBITED

WHEREAS, an attorney at the direction of the mayor entered into an unauthorized contract to participate in arbitration; and

WHEREAS, the objective of this arbitration, although it purports to address an alleged dispute with Oakpointe, is to give the Mayor, with respect to long term contracts with Oakpointe, the authority to approve such contracts without City Council approval pursuant to the Mayor's alleged executive authority; and

WHEREAS, the Mayor has no such contractual authority, but the Mayor and Oakpointe want a decision from an arbitrator recognizing such authority, and their arbitration briefs both wrongly claim the existence of such authority; and

WHEREAS, a decision changing the City Council's contractual authority conferred by RCW 35A.11.010 and BDMC 2.90.010 would require a decision in an open public meeting, after notice to the public of the intent to so amend the City Code; and

WHEREAS, the City Council has not authorized this arbitration; and

WHEREAS, it would be improper to participate in an adjudication that could result in taking away some of the City Council's contractual authority;

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

Section 1. The City Council clarifies that the Mayor has no authority to agree to anything on behalf of the City with regard to arbitration, including participation in the arbitration before retired Judge Scott at JDR.

Section 2. The mayor and the firm of Kenyon Disend initiated a legal proceeding in violation of RCW 35A.12.100 without approval of a majority of Council.

Section 3. Neither the Mayor nor her attorney have the authority to bind the City to a decision-making process that could result in a binding, non-appealable decision.

Section 4. According to applicable law and policy, the Mayor and her administration shall have no standing to participate in arbitration proceedings, further participation in arbitration is prohibited, and the city will comply with RCW 35A.11.010 and BDMC 2.90.010 regarding contracts made on behalf of the City.

Section 5. A decision changing the City Council's contractual authority conferred by RCW 35A.11.010 and BDMC 2.90.010 would require a decision in an open public meeting, after notice to the public of the intent to so amend the City Code.

Section 6. The City Council prohibits paying the Arbitrator for any services rendered after receipt of the objection from the City Council and review of that objection because it has not authorized this arbitration, and it would be improper to participate in an adjudication that could result in taking away some of the City Council's contractual authority.

Section 7. The arbitrator is given notice that the City and the Mayor are withdrawing from the arbitration. The City Clerk is requested to notify the parties of this resolution.

Section 8. The City Council refuses to enforce any decision from the arbitrator or follow any decision resulting from this illegal, unauthorized decision-making process.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 4TH DAY OF
MAY, 2017.

CITY OF BLACK DIAMOND:

DENIED

Carol Benson, Mayor

*Invalid - Contrary to state
law - (see attached)*

Attest:

Brenda L. Martinez, City Clerk

Carol Benson

From: David Linehan <david@kenyondisend.com>
Sent: Friday, May 05, 2017 10:36 AM
To: Carol Benson; Andy Williamson
Subject: FW: Black Diamond Resolution Passed Prohibiting Further Participation in MDRT Arbitration

From: David Linehan
Sent: Friday, May 05, 2017 10:25 AM
To: 'Jane Ryan Koler' <jane@jkolerlaw.com>; 'Steve Scott' <scott@jdrllc.com>; 'Beth Forbes' <forbes@jdrllc.com>
Cc: Margaret Starkey <Margaret@kenyondisend.com>; nrogers@cairncross.com
Subject: RE: Black Diamond Resolution Passed Prohibiting Further Participation in MDRT Arbitration

Ms. Koler --

I have two questions for you:

1. Were you aware of this resolution before it was presented at last night's City Council Meeting?
2. Do you still intend to file the reply brief on Monday, May 8th, per your request to Judge Scott earlier with week for additional time?

Judge Scott and Ms. Rogers --

The Mayor will not be signing the resolution, as it is contrary to state law and void *ab initio*, for many of the same reasons discussed in the Administration's Response to the Council's Objection to Arbitration. The City Administration has no intention of withdrawing from the arbitration and expects it to proceed as agreed.

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From: Jane Ryan Koler [<mailto:jane@jkolerlaw.com>]

Sent: Friday, May 05, 2017 10:16 AM

To: 'Steve Scott' <scott@jdrllc.com>; 'Beth Forbes' <forbes@jdrllc.com>

Cc: David Linehan <david@kenyondisend.com>; Margaret Starkey <Margaret@kenyondisend.com>; nrogers@cairncross.com

Subject: FW: Black Diamond Resolution Passed Prohibiting Further Participation in MDRT Arbitration

Dear Judge Scott:

The attached resolution was approved at last night's City Council meeting. The Mayor has not yet signed it.

Thank you,

Jane Koler
LAND USE & PROPERTY LAW, PLLC
6659 Kimball Drive, Suite B-201
Gig Harbor, WA 98335
jane@jkolerlaw.com
(253) 853-1806

From: Pat Pepper [<mailto:ppepper@blackdiamondwa.gov>]

Sent: Thursday, May 04, 2017 10:27 PM

To: jane@jkolerlaw.com

Cc: Brenda Martinez; Carol Benson

Subject: Black Diamond Resolution Passed Prohibiting Further Participation in MDRT Arbitration

Hello Ms. Koler,

The attached Resolution passed tonight at the May 4 Black Diamond City Council meeting. Section 7 requests that the City Clerk notify the parties involved. I will also make the same request of you, Ms. Koler to let the parties to the arbitration know that this resolution passed.

Thank you,

Pat Pepper

Black Diamond City Council